COLLECTOR OF CUSTOMS.

Clarence W. Ide, of Washington, to be collector of customs for the district of Puget Sound, in the State of Washington.

PROMOTIONS IN THE NAVY.

Commander William Swift, to be a captain in the Navy, from the 9th day of February, 1902.

Lieut. (Junior Grade) Roscoe C. Bulmer, to be a lieutenant in the Navy, from the 9th day of February, 1902.

Lieut. Martin Bevington, to be a lieutenant-commander in the Navy, from the 5th day of March, 1902.

Lieut. Robert F. Lopez, to be a lieutenant-commander in the Navy, from the 11th day of April, 1902.

Asst. Surg. Holton C. Curl, to be a passed assistant surgeon in the Navy, from the 14th day of October, 1901.

Lieut. Walter J. Sears, to be a lieutenant-commander in the Navy, from the 17th day of December, 1901.

Lieut. John A. Bell, to be a lieutenant-commander in the Navy, from the 15th day of January, 1902.

Lieut. Commander Edward F. Qualtrough, to be a commander in the Navy, from the 9th day of February, 1902.

Pay Inspector Ichabod G. Hobbs, to be a pay director in the Navy, from the 28th day of April, 1902.

Lieut. (Junior Grade) Walter J. Manion, to be a lieutenant in the Navy from the 11th day of April. 1902.

Lieut. (Junior Grade) George E. Gelm, to be a lieutenant in the Navy from the 11th day of April, 1902.

Asst. Surg. Francis M. Furlong, to be a passed assistant surgeon in the Navy from the 16th day of September, 1901.

POSTMASTERS.

Orange L. Bantz, to be postmaster at Humboldt, in the county of Richardson and State of Nebraska.

Andrew Richmond, to be postmaster at Orleans, in the county of Harlan and State of Nebraska.

Christopher E. Head, to be postmaster at Tallapoosa, in the county of Haralson and State of Georgia.

Thomas J. Helm, to be postmaster at Rome, in the county of Floyd and State of Georgia.

Chester H. Smith, to be postmaster at Plattsmouth, in the county of Cass and State of Nebraska.

Frank McCartney, to be postmaster at Nebraska City, in the county of Otoe and State of Nebraska.

Joel P. Deboe, to be postmaster at Clinton, in the county of Hickman and State of Kentucky.

HOUSE OF REPRESENTATIVES.

THURSDAY, *June 12, 1902.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of yesterday's proceedings was read and approved.

BANKRUPTCY LAW.

Mr. RAY of New York. Mr. Speaker, I ask unanimous consent that what time may be left on Monday next after the disposition of other business and Tuesday be given to the Judiciary Committee. This committee has had no time assigned to it during this Congress, excepting such as we have had incidentally, and my purpose will be, I will say frankly to the House, if we are granted this unanimous consent, to call up and consider the bill H. R. 13679, being an act to amend the act establishing a uniform system of bankruptcy throughout the United States.

The SPEAKER. The gentleman from New York asks unanimous consent that so much of Monday next as is left after taking up matters under suspension of the rules and all of Tuesday be given to the Judiciary Committee for the consideration of matters before that committee, the purpose being especially to call up amendments to the bankruptcy law.

Mr. TAWNEY. Mr. Speaker, I desire to ask the gentleman from New York if he will not allow an hour or an hour and a half to the Committee on Interstate and Foreign Commerce for the consideration of a bill that has been under consideration for almost an hour in the House, known as the London landing clause bill? That is unfinished business, and I think it can be disposed of in an hour or an hour and a half, and if he is willing to give that amount of time, I would have no objection to the Judiciary Committee taking the time he asks for.

The SPEAKER. It may be proper in this connection for the Chair to state that the amount of business to take up under suspension of the rules will consume all of Monday. Is there objection to the request of the gentleman from New York? [After a pause.] The Chair hears none, and it is so ordered.

PENSION BILLS.

Mr. SULLOWAY. Mr. Speaker, I ask unanimous consent that Saturday next may be substituted for the transaction of business on the Private Calendar which would be in order on Friday next.

The SPEAKER. The gentleman from New Hampshire asks unanimous consent that Saturday next be substituted for Friday next for the consideration of matters on the Private Calendar. Is there objection? [After a pause.] The Chair hears none.

EULOGIES ON THE LATE REPRESENTATIVE OTEY.

Mr. JONES of Virginia. Mr. Speaker, on Tuesday, June 10, an order was entered providing for a session of the House of Representatives on Sunday, June 29, the session to be devoted to eulogies on the late Representative Amos J. Cummings. I ask unanimous consent that that order be so modified that after the conclusion of the eulogies provided for therein eulogies may be pronounced upon the life and character of my late colleague, Maj. Peter J. Otey.

The SPEAKER. The gentleman from Virginia asks unanimous consent to so modify the order in respect to the eulogies upon the life of the late Representative Cummings, to be held on the 29th of this month, that it will be in order to consider similar eulogies upon the life and character of the late Major Otey. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

CORRECTION.

Mr. RUCKER. Mr. Speaker, I desire to make a correction of the RECORD. During the debate on the bill for the protection of the President I took occasion to join issue with the distinguished chairman of the committee [Mr. RAY of New York] on his statement of a legal proposition. The CONGRESSIONAL RECORD, on page 6464, contains the following report of the colloquy between myself and the gentleman from New York, which I will ask the Clerk to read.

The SPEAKER. Without objection, the matter referred to will be read by the Clerk.

There was no objection.

The Clerk read as follows:

Mr. RAY of New York. Mr. Chairman, only one word. In all civilized communities there is a distinction made between killing a man with an intent and purpose to effect his death and a killing without any such intent or purpose—an intent to injure where there is no intent to kill, but incidentally or otherwise you go too far and kill. We have maintained a distinction in fixing the punishment in cases of this kind. If a man intends to commit a crime while he is engaged in the commission of a felony, you might hang the offender. He is just as bad as though he had accomplished his purpose. Anyone knows that is true, but the laws of all civilized communities and of all States make a distinction. We have followed that idea, and it is followed in the Senate bill.

If a man only intends to assault the President, and not to kill him, the punishment may be imprisonment for life or a much shorter term, depending on the circumstances. That is left to the discretion of the court, and we believe the courts of this country are so intelligent that they can be trusted to impose the proper penalty when a man is convicted to give him such a sentence as he ought to receive. The distinction between the first section and this one is that the first section puts in the words "knowingly and purposely kill," etc. This section provides for those cases where there is no purpose or intent to kill, but simply an attempt to inflict grievous bodily harm. I may add that there is no State in the Union nor a civilized country on the face of the earth to-day that inflicts anything more than life imprisonment for this offense, except when in the commission of a felony a life is taken.

Mr. RUCKER. The gentleman is mistaken about the law.

Mr. RAY of New York. I am not mistaken. I have taken every statute and have collated them. The man that states to the contrary does not know exactly what he is talking about.

Mr. RUCKER. The gentleman from New York does not know all the law of this country by himself alone. [Laughter.]

Mr. RAY of New York. I understand that, but we have taken all the statutes and compiled them—

Mr. RUCKER. The gentleman's compilation may be all right, but his construction is wrong. I know the universal law is that a man is presumed to intend the usual consequences of his own act, and where he uses a deadly weapon, he is presumed to intend the natural and usual consequences of that weapon.

Mr. RAY of New York. Now, Mr. Chairman, I concede that, and I think that debate on this amendment is exhausted, and I call for a vote.

Mr. RUCKER. Now, Mr. Speaker, if the CONGRESSIONAL RECORD just read contained the language used by the gentleman from New York, then the interruption made by myself would be silly and absurd in the highest degree; because I concede that, as printed in the RECORD, the gentleman's position is correct; but that is not the language used by him. I have obtained from the Official Reporters a transcript of their notes, and this shows that the gentleman has modified his language. I complain of the gentleman's modifying and revising his language so as to place me in an awkward and unjust attitude in the RECORD. The exact language of the gentleman, as shown by the Official Reporters' notes, is this:

Mr. RAY of New York. Mr. Chairman, only one word in answer to the amendment. In all civilized communities there is a distinction made between killing a man with an intent and purpose to effect his death and killing him without any such intent or purpose, but simply intend to injure him where there is no intent to kill, but incidentally or otherwise you go too far and kill him. We have maintained this distinction in fixing the punishment. If a man intends to commit a crime and fails, while he is engaged in the commission of an actual felony, you might say hang him; he is just as bad as

though he had accomplished his purpose. Anyone knows that is true, but the laws of all civilized communities of all States make a distinction according to the intent. We have followed out that idea, and it is followed out in the Senate bill.

If you simply intend to assault the President and not to kill him according to the grievousness of the injury inflicted, it may be imprisonment for life or a much shorter term. That is left to the discretion of the court, and we believe the courts of this country are so intelligent that they can be trusted to impose the proper penalty and when a man is convicted to give such a penalty as he ought to receive. The distinction between the first section and this one is that the first section puts in the words "knowingly and purposely kill," etc. This section provides for those cases where there is no purpose or intent to kill, but simply an attempt to inflict grievous bodily harm. I may add that there is no State in the Union nor a civilized country on the face of the earth to-day that inflicts anything more than life imprisonment for this offense.

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Mr. RUCKER. The gentleman's compilation may be all right, but his construction is wrong. I know the universal law is that a man is presumed to intend the usual consequences of his own act, and where he uses a deadly weapon he is presumed to intend the natural and usual consequences of the use of that weapon.

Now, Mr. Speaker, a comparison of the gentleman's language as printed and as actually delivered shows the modifications which the gentleman made in revising his remarks, and the changes put me in the attitude of controverting a well-recognized principle of law. The gentleman evidently realized that there was some force and merit in the objection I made to his statement of the legal proposition, and he modified his statement so as to avoid the objections made by me. Now, since the gentleman did not do me the courtesy to ask me to withdraw my language in order that he might edit his remarks and place himself in the RECORD as he ought to be placed, as a great lawyer of this House, I insist that the language used by the gentleman ought to go into the RECORD, or else the language used by myself, in courtesy to me, ought to be taken out of the RECORD. I do not care which horn of the dilemma the gentleman takes.

Mr. RAY of New York. Mr. Speaker, the only possible difference between the gentleman and myself is this: When I stated the rule of law on the floor, in the hasty colloquy that was taking place, I stated the general rule. The gentleman took issue with me. It did not occur to me at the moment that I had not stated the exception to the rule. The gentleman said I had not stated the rule correctly, as I understood him, and I took issue with that statement. Now, when I looked over the remarks that were actually made, I found that I had not stated the exception that I should, and in revising my remarks I simply added the exception. I apologize to the gentleman, if he thinks that put him in an unfair situation; but as I say, when I made the statement on the floor, I concede that I omitted to state the exception to the rule. If the gentleman had called my attention to that fact, I would have made the correction at the time.

I understood him to contend that the rule I stated was not the general rule. The gentleman was correct in saying that I did not state the law correctly because I did not add the words stating the exception. I trust that with this explanation no injustice will be done the gentleman. I certainly have for him the very highest regard, not only as a gentleman but as a lawyer, and the whole difference was that in the haste of a five-minute colloquy we were both a little in error; but I will concede that I was more in error than he. Neither of us, I am sure, intended discourtesy or to charge ignorance.

Mr. RUCKER. Mr. Chairman, the gentleman's language when this bill was under discussion was that anyone who took the position I did knew nothing whatever of law; but since his conversion, and since he has to-day so clearly stated the facts and exonerated me from blame, I accept the statement made by him in the spirit in which it is made. [Applause.]

IRRIGATION OF ARID LANDS.

Mr. DALZELL. Mr. Speaker, I submit the following privileged report, which I will ask to have read.

The Clerk read as follows:

Mr. DALZELL, from the Committee on Rules, submitted the following report:

The Committee on Rules, to whom was referred the resolution of the House No. 222, have had the same under consideration, and respectfully report the following in lieu thereof:

"*Resolved*, That immediately after the adoption of this resolution it shall be in order to consider in Committee of the Whole House on the state of the Union the bill (S. 3057) appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands, and consideration thereof shall continue for two days, one of which shall be devoted to general debate and one to debate under five-minute rule and for amendment. At the end of said two days a vote shall be taken. But this order shall not interfere with revenue or appropriation bills or conference reports."

Mr. DALZELL. Mr. Speaker, the rule that has been read at the Clerk's desk is a very simple one. It provides merely for the consideration of the irrigation bill, provides for two days' debate—one for general debate and one for debate under the five-minute rule—and then calls for a vote.

Mr. ROBINSON of Indiana. Mr. Speaker, I would like to ask the gentleman from Pennsylvania to yield to me some time, additional, to discuss the proposition involved.

Mr. DALZELL. How much time does the gentleman want?

Mr. ROBINSON of Indiana. I would like, in order to make the argument with some continuity, more time than the gentleman would agree to yield. I suggest that he yield fifteen minutes and that I can possibly get an additional five minutes.

Mr. DALZELL. I yield fifteen minutes to the gentleman.

Mr. ROBINSON of Indiana. Mr. Speaker, to a casual observer of legislation and to those who have only casually looked into the important questions involved it may seem that two or three days' time would be ample for the discussion of the features presented by this bill. But, involving, as it does in one form or another, nearly all the principles of government for which we have stood, involving all the questions of change in the administration of the public lands, involving the abdication by the House of Representatives of its powers over appropriations, involving the constitutional questions of State and national powers, and involving home rule, for State rule is home rule, for which this side of the House for a century has stood, two days' time for the discussion of these questions is not ample to present them to the House of Representatives. It involves the whole field of appropriation, economy in expenditure, wasteful extravagance, special and political influence, jobs and deals, political and legislative.

It involves in government a change of an old and the ingrafting of a new system of laws for the regulation and control of 600,000,000 acres of public domain along untried and experimental paths.

I do not mean that irrigation is an experiment, for it has been successfully and profitably employed by State and private enterprise for ages. But to the Government it is new, experimental, and dangerous.

This change involves the abdication by Congress of its rights and its duties to appropriate money derived from taxation, money derived from the sale of land owned by all the people, and it is a surrender of these rights of the people and this prerogative of Congress to a Federal officer in the expenditure of a mountain of money, the cost of which irrigation projects is variously estimated by experts at from the lowest, $300,000,000, to the highest, $600,000,000, being the reclamation of 60,000,000 acres of irrigable land at from $5 to $10 an acre on the average.

While this estimate of 60,000,000 acres of irrigable land is made, there are yet 540,000,000 in the arid regions, and we may confidently assume, in the light of all past experiences, that the efforts of experts and officers in charge will not be relaxed till the bounty of heaven is exhausted and the flood and snow waters are no more. Cum grano salis is a good rule in passing on preliminary estimates of experts when their hearts are set on a project.

I congratulate the gentlemen of the arid regions, who have a special interest not common to the whole country, on securing consideration for this measure of interest in their districts and States but troublesome and dangerous to every other section of the country.

That it will affect them advantageously and ruinously affect all the rest of us I firmly believe, and think this will be made plain by a reading of the bill and the majority and minority reports. I can not speak in unkindness, but in praise, of Representatives of the States whose stars are fast floating away in the firmament, losing their luster, and preparing to join the milky way, but my constituency can not contribute to its own downfall to rescue them from the gloom that surrounds them, and I claim only the same rights that Representatives always exercise on this floor to protect my people as I have the understanding to perceive and the power to execute. An attempt has been made unjustly and inordinately to control the Democratic Congressional committee and to divert it into an unwarranted and dangerous path, and culminated a brief time ago in a minority acting on some sort of an irrigation resolution.

Mr. SHALLENBERGER. Will the gentleman permit an interruption?

Mr. ROBINSON of Indiana. Much as I desire to continue my argument, I yield to the gentleman.

Mr. SHALLENBERGER. Will you permit me to read to you the Democratic platform?

Mr. ROBINSON of Indiana. I will read it presently, and the gentleman need not do so.

The simple statement of fact carries its own refutation of power and authority, and the resort to that body instead of to a Democratic caucus carries a suspicion to the act if not a condemnation of the measure in support of which this unheard-of procedure was invoked.

When analyzed and the lack of jurisdiction and authority is seen, the mode of promotion understood and the futility of the

attempt is considered, the whole effort vanishes into thin air and has not the force of a feather's weight to control the head, or heart, or the conscience of a single man, as a Democratic pronunciamento.

Straws show how the wind blows and furnish figures of speech, one that was grasped after by the drowning man and the other that broke the camel's back.

For one member among the many whose election I understand it to be the sole object of the committee to secure, I am willing to concede without criticism whatever advantage those who sought this unjustifiable course can gain by the boldness of this attempt from the arid region and the utter futility of the result.

Mr. HOPKINS. Will the gentleman allow me a question?

Mr. ROBINSON of Indiana. I have only fifteen minutes.

Mr. HOPKINS. I did not understand what Democratic committee is trying to do this thing.

Mr. ROBINSON of Indiana. Well, the gentleman must read my remarks. I only had yielded to me fifteen minutes by the Republican Rules Committee.

With the attitude of public men on this question so various and so divergent, the one who thinks that politics dwells in this great public question has not the forecast of a political prophet, and will awaken from his reverie to find the powder flashing in the pan, and if the fish does jump it will be from the frying pan into the fire. It will come back to plague us and our successors.

I have deep and settled convictions on the proposition for which this rule seeks consideration. I am impressed with its importance and its dangers as national legislation. It leads us to great national improvement of forests and streams, drilling of deep artesian wells, saving the former from fire and the latter from overflow and percolation. Under bills like this good roads must be built and preserves guarded by the Federal Government. Swamp lands and lake regions and all must come in for their share of Federal patrimony, when the whole matter more properly belongs to the polity of the States.

With favorable consideration of measures like this statesmen will be found drifting away, day by day, from the sacredness and safety of State rule, so strongly supported by so many in years gone by, and new recruits be found in proportion for the dangerous idea of a strong central government sought by so many to-day. The dangers in this legislation does not lurk in but one or but several of the features of this bill, but are manifold and are present in nearly all of its sections.

In this whole scheme of irrigation, too early for consideration now, I find only cause for deep foreboding. There is scarcely a line in the proposition that does not bristle with objections from a Democratic standpoint.

To my Democratic colleagues I say that you may explore the whole field of legislation upon which we have been most conservative and careful and objections repeatedly and forcibly made will be found applicable here.

Two days' time fixed by the rule to consider in its general scope and detail this measure does not furnish time enough to cover with care and pains the vast field opened up for discussion and settlement, embracing as it does so many new and so many old and objectionable features as are presented for our consideration. If there is any Democratic principle embraced in this bill, a careful analysis has failed to disclose it to me. If there is any dangerous principle that we have always fought against not contained in it, I can not now recall what it is. I do not claim to be infallible, of course, and accord to all the same right to think and speak for our party as I claim myself. I only assert now that I do not regard politics as in the bill.

I am sure it is not a Democratic bill, nor would I charge it to be a Republican bill, for I regard too highly many of my friends on the other side. To be entirely frank with the House, I regard it as an arid-land bill and nothing else.

At the beginning of this session the arid-State members in committee assembled properly elected the gentleman from Nevada chairman and proceeded to draft an irrigation bill. The committee was composed of a large majority of Republicans, but politics was submerged to get some irrigation legislation.

The committee, of course, was confronted with platforms and constitutions, national and State. Where they pointed their way, they adopted them; where they run counter, they run over them or passed them by.

They took up first the Republican national platform of 1900, and upon that this bill was drafted and introduced in the Senate. After a little while the bill passed without a division in the Senate, and went to the House Committee on Arid Lands, a majority of whose members are from arid or semiarid States.

The troubles then began. The President was for one kind of irrigation, with national control of canals and water distribution, and the Republican platforms, national, State, and Territorial, and some State constitutions of States affected, were for another kind, with State control of canals and water distribution. The President told the committee that called on him that the Senate bill was not in consonance with his ideas of irrigation; that if the United States built canals it should, to keep the water supply from politicians, control the distribution.

This information seems reliable from newspaper reports.

By looking at the bill you will find a lame, bungling effort to accomplish an impossible blending of the views of the President for national control and the contrary view of platforms and constitutions for State control. This was done in the committee room of the House. This effort makes a hotchpotch of a bill, with crudities and incongruities which, if it were possible, makes it more of a medley than when it left the Arid States Committee.

Thus it is seen that, from a Republican standpoint, it has no political significance and no political character. The effort to make it so in any way is strained and farfetched.

In view of what has transpired, I feel free to state that I named to three members of Congress from the States affected my objections, and in each instance they responded that I had not enumerated one-half of the objections to it.

Now, under these circumstances, with a bill such as this, out in Indiana, where we are in the habit of judging of political effect—you people having come out so often to discuss political matters to us, we have got in the habit of thinking on political matters—if you want to know what we would do with a man that thought such a matter bore a political significance I will tell you. We would elect him constable in some way-back township where he would get no salary, but a fee if he makes an arrest. [Laughter.]

Now, what is the Democratic position upon this subject, the gentleman asks me. Our platform was for an intelligent system of irrigation. What is an intelligent system of irrigation?

Mr. SMITH of Arizona. Will you suggest one?

Mr. ROBINSON of Indiana. I can, in the language of him who was a high priest on irrigation at the time the platform was adopted. Surely it will not be said that this bill is an intelligent system of irrigation, or a Democratic measure. To prove this the bill need only be read. What was before Congress, before the country, or before the convention as "an intelligent system of irrigation?"

Who was the high priest of irrigation in the Fifty-fifth Congress, and what did he say? Who was the apostle to whom all others bowed then? It was the gentleman from Colorado [Mr. SHAFROTH], whom we all admire for his sterling worth.

His was the bill before the country, on the Speaker's table in the House, and it was so meritorious that even Speaker Reed allowed it to pass the outside portals. It was ably reported—the gentleman will admit this—by the gentleman himself from the Committee on Public Lands.

What was its purpose and objects? It gave a million acres to each State to aid it and to aid private enterprise to irrigate.

Let me read what the gentleman said—his judgment on the subject—on this only rational scheme of irrigation then before the House and the country:

> It seems to your committee that one of two courses must be pursued by the United States. Either the National Government must undertake the reclamation of these lands by the construction of reservoirs and canals to impound and lead the water to the lands that are to be settled, or else this Government should transfer these lands to the States, so as to permit them to undertake the work of reclamation.
>
> Of course the people of the arid-land States would much prefer that the work of reclamation should be undertaken by the National Government. They would like to see the National Government construct large reservoirs and canals there, but it is hardly within the range of possibility that the nation will undertake the same. The amount to be appropriated would be so large, the Representatives from the arid States are so few in number, that it can not be expected that the Government would ever enter upon the work of reclaiming these lands.

This was a solemn committee report emanating from the clear head and clean heart of that great champion of irrigation. His name gives force and strength to his reports when he is right, as he was in this case, and he no doubt moved the convention. This new scheme involves the complicated, complex, litigious, and dangerous questions of condemnation of private property in a State jurisdiction by a Federal officer, and which power and property so condemned is to be used in and for another State to irrigate public land not only, but private land as well. To illustrate: Nevada must go to California and invoke all the complicated machinery of law—must wade through the perplexing problems of condemnation and interstate rights or get no water, and this rendered still more difficult by the invoking of the law within a State jurisdiction by a Federal officer for uses not wholly within the State and not exclusively concerning United States land.

Such a conflict and litigation would arise like unto that which might come were the dead to arise and attempt to trace their ancient possessions. This scheme involves the purchase without condemnation by a United States officer from the public land fund belonging to all the people, at exorbitant figures, as it must be when the United States is the purchaser in a State jurisdiction of private property for the uses and purposes I have just named.

It involves the United States Government in the execution of

an enterprise around which will cluster, like banqueters at a feast, those patriotic American citizens, with too many of which we unfortunately are cursed, who are always ready to encourage an enterprise by the Government, however stupendous, because there is something in it for themselves.

It involves the robbery of peoples of self-government in States, and while some speak for them, saying that American citizens will abjectly submit to a surrender of their sovereignty to receive these gifts of the people's lands, and submit to be governed 2,000 and 3,000 miles away, I believe that representatives of other States should save this misguided people from their friends and at once protect the interest of their own States, their own constituents.

It is charged that the land-grant railroads are the principal promoters of this legislation. This is not met with a disclaimer, but by the question, "Suppose they are?" This is a question difficult to answer satisfactorily to all, but for myself, I am unwilling to stand for a proposition embodied in this bill which my party has always stood against; unwilling to promote a system of land grants, either in the land itself or by the Government's increase of value to it, when I remember my party's opposition to the original grants and its vigorous insistence on the forfeitures of lands by the railroad corporations by reason of their refusal to comply with the terms of the grants. Others may see their way clear to go into this conflict with party doctrine, but I can not.

Even if the great railroad interests of these sections do say that the only reasons for this dangerous legislation is to give us the Asiatic trade, for my part I can not see enough of merit in this irrigation proposition from any standpoint to fly me in the face of my party's uniform attitude when it made history on both the subsidizing of railroads by land grants or on expansion, the one the real and the other the claimed reason why the railroad corporations are in favor of the bill.

This bill involves the United States Government in the employment of its machinery of government to force values and utility in land by a stupendous outlay to control the elements by conquering nature's course, thereby exerting government powers in fields that should be exploited and will be exploited by State and private enterprises as fast and as far and as prudently as the needs of the people and localities may require.

It is aimed to deter the slow but steady tide of immigration now setting in from the North to the rich mining fields of Tennessee, Alabama, and the South; to check those who, from my State and others, go South to find your sweet Southern hospitality and reach your blooming fields, and, mingling with you, give a force for the future that no arid region irrigated in the world can compare with the results of this combination, and no States can rank your Southern States in the industrial development thereby produced. [Applause.]

Mr. DALZELL. Mr. Speaker, I now ask for the previous question.

Mr. UNDERWOOD. I hope the gentleman will allow some time to this side.

Mr. DALZELL. How much does the gentleman desire?

Mr. UNDERWOOD. I think there are two gentlemen who want to speak.

Mr. DALZELL. How much time is desired?

Mr. UNDERWOOD. Thirty minutes.

Mr. DALZELL. I yield my colleague on the committee thirty minutes.

Alabama

Mr. UNDERWOOD. Mr. Speaker, I do not desire to detain the House at any great length in the discussion of the rule under consideration or of the bill that this rule proposes to take up for consideration. The rule now under consideration reported by the gentleman from Pennsylvania [Mr. DALZELL] comes before the House with the unanimous report of the Rules Committee. The bill for the reclamation of the arid lands in certain Western States is reported to the House by a majority of the committee which had it under consideration. All of the Democrats on the committee join in the report, and all of the Republicans except two. Both the Democratic and the Republican parties in their last national conventions indorsed the proposition of the United States Government granting aid toward the reclamation of the arid lands of the West.

I differ with the statement of my friend from Indiana [Mr. ROBINSON] when he says that there is something undemocratic in this bill and that it is not in line with democratic principles. The representatives of the Democratic party on the floor of this House, since the beginning of the Government have uniformly concurred in legislation giving the public lands that belong to the Government as bounties to soldiers who had fought in the various wars of our country, and also in giving these lands, or the proceeds thereof, to the States or to State institutions for educational purposes. Our predecessors on the Democratic side of the House have always taken the position that the public lands were a part of the private purse of the nation, and that the proceeds thereof were not subject to the same limitations on the expenditures as were moneys in the Treasury derived from taxation.

The Democratic party has always contended that moneys raised by taxation of the people were a trust fund paid into the Treasury for specific purposes, and that it was a violation of the trust to expend them for other than purely governmental purposes, such as maintaining the machinery of the Government, the maintenance of the Army and the Navy, and such expenditures as were necessary in carrying on the Government of the United States under the powers conferred upon it by the Constitution, but no party, so far as I am informed, has ever contended that this doctrine applied to the moneys received from the sale of the public lands belonging to the nation. Let me enumerate, for a moment, the various dispositions that have been made of the public lands by our Government and at times when the Democratic party was in power in the House of Representatives.

First. Public lands were given as bounties to veteran soldiers and sailors of all wars, from the Revolution down to the civil war.

Second. They were at one time a large source of public revenue, and their proceeds were converted into the public Treasury and used for all governmental purposes.

Third. The proceeds of the public lands were used for maintaining a general land office, and for surveying and preparing the public lands for settlement.

Fourth. Before the days of railroads they were given for the construction of canals, highways, and levees.

Fifth. The sixteenth and thirty-second sections were given to the States for educational purposes.

Sixth. Large amounts of public lands have been given by Congress to various public and private colleges for educational purposes.

Seventh. The proceeds of the sale of public lands have been given to the States to maintain agricultural colleges.

Eighth. Land grants have been given to the railroads to aid in their construction and the opening up and the development of the great West.

It is now proposed to give the proceeds of the sale of the public lands in certain Western States as a trust fund for the purpose of reclaiming the arid lands of those States, and, from a constitutional standpoint, I must say that I fail to draw a distinction between giving the proceeds of the sale of the public lands to education or the lands to soldiers and sailors or to railroads, canals, or companies organized to build levees, and the giving of the proceeds of the sale of the lands in these States to the people in the States in order that they may make their own country habitable. In my judgment, in our doing so, we are only carrying out the purposes for which we originally acquired the public domains. At the close of the war for independence the territory recognized by the King of England as belonging to the thirteen colonies extended from the Atlantic Ocean to the Mississippi River on the west and from the Great Lakes on the north to the Gulf of Mexico on the south and embraced about 830,000 square miles, or 531,000,000 acres. Of this territory at least 404,000 square miles lay west of the Alleghany Mountains and was uninhabited except by the Indians.

In the year 1780 Virginia, New York, Massachusetts, and other States in the Union ceded this western territory to the Continental Congress, and it may throw some light on the present question when we consider under what terms this cession was made and for what purpose it was accepted by the Congress of the thirteen colonies. On the 10th day of October, 1780, shortly after the cession of this territory, Congress passed a resolution that the territory ceded to the colonial government—

> Shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union and have the same rights of sovereignty, freedom, and independence as the other States. * * * That the said lands shall be granted or settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them.

This resolution was the corner stone of the Territorial system of the United States and has been recognized as such from that time down to the present day. As stated in the foregoing resolution, the ultimate object to be attained was to convert this vast public domain into States of the Union. The Government accepted the lands for this purpose. In order to carry out this purpose it was necessary to open the land to settlement and induce the people to go there, for you could not have States without having inhabitants. I therefore contend that it was legitimate and in no wise a violation of the terms of our Constitution for the Government of the United States to use these lands, or the proceeds thereof, in any way that would aid in the development of the country and the settlement of the lands.

It was therefore no violation of the Constitution to grant these lands to soldiers on the condition that they settle and develod them, nor to grant certain portions of land as endowments to

schools, as that had a tendency to attract population and develop the country, nor was it a violation of the Constitution to grant these lands to railroads, because without means of transportation it was impossible to develop the country, nor was it a violation of the Constitution to grant these lands to companies or individuals for the purpose of building canals to drain the lands, or erecting levees to prevent the overflow of water, because the doing of both was necessary in order to develop the lands so that they could be used for settlement and home building.

Now, is it going a single step further than we have already gone when we consider the grants for the draining of overflow lands and the raising of dikes and levees to prevent the overflow to say that we will grant these lands or the proceeds derived from the sale of public lands for the purpose of conserving the waters of their torrential streams in order that they may be used to irrigate those lands that are now barren for the lack of rainfall, and make them suitable for agricultural purposes, so that they may attract population and develop the great States and Territories of the West? I think not. In my judgment it is merely in line with the original intention of the fathers that all reasonable means should be used to attract population to the uninhabited lands of the country, in order that they might acquire the necessary population to make them thriving and prosperous States of the Union.

As I stated above, the bill merely proposes to take the proceeds of the sale of the public lands in the 17 arid States and Territories of the West that lie west of the one hundredth meridian of longitude, extending practically to the Pacific Ocean; in other words, embracing largely that territory laying westward of a line drawn through the middle of the Dakotas, Nebraska, Kansas, and Oklahoma. The territory embraced in what is now known as the arid region covers about 600,000,000 acres of land, amounting to at least one-third of the territory of the United States with Alaska excluded. It is admitted that all of this country can not be irrigated, but it is shown by reports of the Government that about 60,000,000 acres of land are subject to irrigation and can be converted into valuable farms. Whereas if nothing is done toward the developing of this country it will remain practically a desert for all time to come.

There is nothing new in the idea of irrigating land for farm purposes. Irrigation goes back as far as the history of civilization. In fact, the first dawn of civilization seems to have originated with people who lived in a country where, to a large extent, it was necessary to resort to irrigation for agricultural development. In the great West the snow accumulates on the Rocky Mountains during the winter. In the spring and early summer it melts, and rivers that are dry in the fall become torrential streams, carrying vast quantities of water to the sea. In a few months this water flows off and the beds of the rivers are dry. There is very little rain in a large portion of this country, and in the fall of the year the crops would perish unless artificial means are used to furnish the necessary moisture in the dry months.

It is proposed by the present bill to take the proceeds of the sale of the lands in these arid States, amounting to something between a million and a million and a half a year, and turn them over to the Secretary of the Interior, as a trust fund with which to build great dams to hold the surplus waters that come down the Western rivers in the spring, and build canals carrying the waters from these dams across to the lands to be irrigated. The small ditches from the canals to the farms are expected to be built by the owners of the land. The proposition is that the lands shall be sold for homesteads at the actual cost of building the dams and canals, the money raised to go back into the trust fund for further development of other lands and the opening of new country to settlement. It is therefore seen that it is not proposed to take any money from the Treasury that is derived from the people by taxation, but merely to grant to them the proceeds of the sale of their own lands in their own States to work out their own development.

It is contended by some that this bill should not pass, because it is opening up farming lands of the West to come in competition with our Eastern and Southern farms. I have no patience with such an argument, for had our fathers pursued such a policy, neither the Middle States nor the Western States would ever have been developed, and besides that it overlooks the fact that these lands are being opened to settlement for all the people, whether they now reside in the East, South, or West. The farm boys in the East want farms of their own. It gives them a place where they can go and build homes without being driven into the already overcrowded cities to seek employment.

It will provide a place for the mechanic and wage-earner to go when the battle for their daily wages becomes too strenuous in the over-crowded portions of the East. Products raised on these lands must find a market either on the Western coast or in the Orient, as the railroad freights to the East are too great to allow the shipment of ordinary farm products eastward to compete with our own farm lands. A large portion of the arid lands will be used for the raising of fruits and products of the soil that does not come in competition with the farmers of the East. If this policy is not undertaken now, this great Western desert will ultimately be acquired by individuals and great corporations for the purpose of using it for grazing vast herds of cattle.

They will acquire the waterways and water rights for the purpose of watering stock and become land barons. Then it will be impossible to ever convert it into the homestead lands for our own people or to build up the population of this Western country. I believe the passage of this bill is in the interest of the man who earns his daily bread by his daily toil. It gives him a place where he can go and be free and independent; it gives him an opportunity to be an owner of the soil and to build a home. Those are the class of men we must rely on for the safety of the nation. In times of peace they pay the taxes and maintain the Government; in times of peril and strife they are the bulwark of the nation, and it is justice to them that this legislation be enacted into a law. [Applause.]

Mr. SHAFROTH. Mr. Speaker, the speech of the gentleman from Indiana [Mr. ROBINSON] was a very good speech on the merits of the bill, but it did not touch the question which is before the House at the present time. The question is whether we shall give consideration to this irrigation measure, and on that question the gentleman did not utter one word, except that which might be considered as being against the bill in toto. Mr. Speaker, the fact that this measure has been agitated by the people of the United States for many years, the fact that there has been a consensus of opinion among most Americans that something in this line ought to be done, the fact that the great national parties of this country, the Democratic party and the Republican party, have seen fit to place in their platforms planks indorsing a measure of this kind, alone entitle the bill to consideration in this House; and when we take into consideration also the fact that this is a bill which has been enacted by the Senate and comes to the House, we find an additional reason why we should give the measure consideration. So that it seems to me that every single man in this House, whether he be Republican or Democrat, should vote in favor of the consideration of this bill, no matter whether the bill meets his views or not.

The gentleman from Indiana referred to these platforms. I want to call attention to the particular language which is contained in them. The Republican party met in convention at Philadelphia, Pa., a place far removed from any arid lands, it being in a part of the country where rainfall is abundant, and that convention, in response to a general demand, deemed proper to insert in its platform the following declaration:

> In further pursuance of the constant policy of the Republican party to provide free homes on the public domain, we recommend adequate national legislation to irrigate the arid lands of the United States, reserving control of the distribution of water for irrigation to the respective States and Territories.

The Democratic convention met in Kansas City. Missouri is not an arid-land State. Yet notwithstanding that fact that great convention adopted a plank in its platform relative to this subject. The language of that platform upon this subject is as follows:

> We favor an intelligent system of improving the arid lands of the West, storing the waters for purposes of irrigation, and the holding of such lands for actual settlers.

The gentleman from Indiana says that this is not an intelligent system of irrigation, but refers to a bill which I introduced in the Fifty-fourth Congress, which was a partial measure to let these States do the work of erecting and building reservoirs within their respective limits. Mr. Speaker, when we take into consideration the wording of this platform, it can be seen that it was the intention of that political party in that convention not to indorse that kind of a proposition, because it provided that "said lands shall be held for actual settlers;" and if these lands were ceded to the States by the National Government, I would like to know how the nation could hold them for actual settlers. Consequently the statement which the gentleman makes that they had in mind a bill which I had introduced and which was favorably reported by the Committee on Public Lands is flatly contradicted in the very declaration of the platform itself.

Mr. ROBINSON of Indiana. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman yield to the gentleman from Indiana?

Mr. SHAFROTH. I yield for just one question.

Mr. ROBINSON of Indiana. Does not the gentleman know that Congress could provide as a condition precedent to the acceptance of those lands the actual holding of them for the settlers?

Mr. SHAFROTH. Yes; but was there anything provided in that bill that they should hold them for actual settlers? No, sir; not a syllable. Besides, as I stated in the report upon that bill,

it would be better for the National Government to undertake it, but I felt at that time, with the public sentiment against us, that we could not get the relief.

Mr. Speaker, I tried to get consideration of that bill. It is true Speaker Reed recognized me to call up the measure, but objections were made to its consideration; objections even were made to setting a day for its consideration, and those objections were based upon the ground that the United States should not cede lands to the States for any such purpose. It seems that when we get a bill up here to grant lands to the States to be used in reclaiming arid lands, then somebody objects to it and says the National Government should hold and should keep control of the lands so as to give actual settlers the right to locate upon the public domain, and when we report a bill that is in favor of giving to the National Governm ent the power ofconstructing these irrigation works, then we find gentlemen, like the gentleman from Indiana, saying that is not the way to do it, but we should give these lands to the States to be used for that purpose. No matter what position we take we find some people ready to prevent the development of that Western country.

Mr. Speaker, the reasons which the gentleman from Indiana has given against the merits of the bill alone impel me at this time to say a word in relation to the merits of this measure. This bill is one which, if a conservative measure can be considered at all, if a conservative measure with relation to arid lands can be indorsed at all, should receive the approval of this House. The provisions of the bill are in substance that out of the proceeds of the sale of public lands of the arid-land States there shall be created a reclamation fund in the Treasury of the United States, and from that reclamation fund irrigation works shall be built.

After they are completed the cost of the construction shall be divided among the acres of land that can be irrigated from these works, and before anyone can acquire title from the United States to the reclaimed land he must pay into the Treasury of the United States every dollar of the cost of the construction of those works. Talk to me about that being an extravagant measure! Say to me that that is not a conservative measure! Mr. Speaker, it seems to me if any measure on earth could be indorsed, if we are going to develop that Western country in any manner, this is the bill which should meet the approval of every man in this House.

The conditions in the West are simply these: Under the guidance of the gentleman from Pennsylvania [Mr. GROW], a man whom every Western man in this country loves and reveres, the homestead law was enacted. Mr. Speaker, it did not contemplate the settlement of arid lands. It contemplated the settlement of lands that received sufficient precipitation from the clouds to raise ordinary crops. Early in the settlement of the arid region the farmers found that they could take up their 160 acres of public land close to a stream, and by going up a mile or two, dig a ditch and conduct the water, at small expense, to their land, thereby availing themselves of the land laws of the United States with relation to settlement; but those lands in my State have long since been taken up.

The result is that now you can not find any public lands except where it is necessary to go 20 miles up the stream in order to conduct the water thereof to the land. The cost of doing that is more than a hundred times the value of the land. Consequently, it means that no settlement can take place in that country unless some measure is perfected for the completing of large works and reservoirs. Now, Mr. Speaker, that is the condition of that country. It means that development must absolutely stop in agriculture unless we are able to get some legislative relief. It is on that account that this bill has been considered, not only by the West, but even by Eastern people, and has met their approval. A condition confronts us in the West to-day that you gentlemen can not appreciate. It is estimated that this very year 50,000 Americans have gone across the border into Canada for the purpose of locating upon the cheap lands of the Dominion.

Are you going to retain your own citizens here or are you going to prefer the development of Canada to the development of your own country, especially when the development of your own country does not take one dollar out of the Treasury of the United States? Ah, Mr. Speaker, there can be but one answer to that. That flow of immigration from the Western States to Canada has occurred solely because there they can get the benefit of cheap land, which receives sufficient rain to raise ordinary crops, while in the United States the available lands are arid. Let us stand for the development of our own country instead of that of a foreign people.

So, Mr. Speaker, we find that something must be done in this matter; that it is necessary to the development of the West; that it is necessary to the building up of this nation and making it the greatest country of the world.

But, Mr. Speaker, as I see that my time is rapidly passing, that I have only about one minute left, I want to say that this talk as to the merits of the bill is not germane now. The only question now before the House is whether we shall give consideration to this measure. No word has been said against that, and I can not see how any man can justify a vote against consideration of a measure that has received the approval of the President, innumerable chambers of commerce, and a large number of labor organizations, and the express commendation of the great political parties of this country, expressed by resolution in national convention.

Mr. UNDERWOOD. Mr. Speaker, I yield the balance of my time to the gentleman from Nevada [Mr. NEWLANDS].

Mr. NEWLANDS. Mr. Speaker, I had hoped that the House would immediately adopt this rule and that we would proceed to debate the pending irrigation bill pursuant to its terms; but the gentleman from Indiana [Mr. ROBINSON], on the consideration of this rule, has seen fit to arraign his party associates upon this side of the House, his party associates on the Committee on Rules, his party associates on the Committee on Irrigation, his party associates on the Democratic Congressional campaign committee, and has seen fit to assure this side of the House that all these gentlemen have been deceived into the support of a purely Republican policy and a purely Republican measure which has the advocacy and support of President Roosevelt.

Now, I contend, Mr. Speaker, that this is a nonpartisan measure; that it is in harmony with the platforms of all parties in the last campaign; that it is in harmony with the enlightened sentiment of the country, which has gradually been formulating itself upon this subject and which found its expression in the party platforms.

It is also in harmony with the opinion of the Senators and Representatives from the arid and semiarid States and Territories regardless of politics. Every Senator and every Representative from that great region has supported this measure.

Now, the gentleman insists that we have been driven by the President into this report of a Republican measure. Let me give the gentleman the history of this measure. For years the arid States have been insisting upon some action by the Federal Government in reference to the arid public lands, composing as they do in some States 95 per cent of their entire area, and they have been insisting that it is the duty of the Government to prepare these lands for settlement, so that the States in which they are located may become populated.

They urged for a long time the cession of these lands to the States. But Congress, regarding this great public domain as a public trust, not to be lightly turned over to sparsely settled States to be managed according to the judgment or lack of judgment, the discretion or indiscretion, the honesty or dishonesty, the providence or improvidence, of State legislatures, regarding it as a heritage for the entire Union, to be preserved for our unborn millions, has refused in its wisdom a cession to the States. So, at last, after the subject had been debated in and out of Congress for twenty years or more, the two parties in 1896 met in their respective conventions and formulated their expression on this subject, almost identical in terms—certainly identical in spirit.

Both parties declared in favor of the reclamation of these arid lands by the National Government and the holding of such lands for actual settlers, and in so declaring they but followed the general sentiment of the country, which was against any abandonment of its trust by the National Government and its surrender to the States.

As soon as that campaign was over I sought to shape a measure which would be in harmony with the two platforms and in harmony with the general sentiment of the country. At the last session of Congress, and before Mr. Roosevelt came into power, I introduced a bill which was the result of careful study of legislation prior to that time, and of consultation with the Secretary of the Interior, the Secretary of Agriculture, the Director of Geological Survey, the chief hydrographer of the Survey, the chairman of the National Irrigation Association, and other well-informed and experienced men on this subject.

Its purpose was to present a settlement of the entire question, to relieve the Treasury of the United States of any burden and simply to devote the proceeds of the sales of lands in the arid regions to the conservation of flood waters, so as to make the waters available for settlers, who would do the actual work of reclamation. The purpose was to present a comprehensive plan, which would impose no burden on the taxpayers of the country, which would enable the West to reclaim itself, and which would preserve this vast domain for home builders, and save it from concentrated and monopolistic holdings.

And if the gentleman will examine that bill—introduced in Congress before Mr. Roosevelt became President—he will find that it is identical in its provisions, though differing somewhat in phraseology, with the bill which is now before us for consideration. That bill, after its introduction, was presented to a meeting

of Western men, regardless of party—Democrats and Republicans and Populists—and received their approval, and they requested Senator HANSBROUGH, chairman of the Senate Committee on Public Lands, to introduce it in the Senate.

This was all in the short session of the last Congress, and there was not sufficient time to obtain consideration of the measure. Later on, after Mr. Roosevelt came into power, he made a recommendation in his message to this Congress substantially in line with the bill of which I have spoken. Shortly after this the Senators and Representatives from 13 States and 3 Territories, constituting the arid region, met together and appointed a committee of 17, regardless of party, to frame and present for their approval an irrigation measure.

They met and after prolonged meetings lasting over a month they agreed upon a bill, which was later on approved at a general meeting of the Senators and Representatives from the arid and semiarid States, regardless of party; and these Senators and Representatives instructed Senator HANSBROUGH, a Republican, to introduce it in the Senate, and myself, a Democrat, to introduce it in the House, thus securing nonpartisan action. It was referred to the committees of the Senate and House and was reported favorably.

It passed in the Senate by a unanimous vote, and then President Roosevelt, who is entirely familiar with that region and knows its wants, invited in consultation some members of the Irrigation Committee of the House, regardless of party. He was somewhat in doubt as to whether the bill was sufficiently guarded in the interest of homeseekers.

It was a question simply of construction. We all wanted to preserve that domain in small tracts for actual settlers and homebuilders. We all wanted to prevent monopoly and concentration of ownership, and the result was that certain changes were made absolutely satisfactory both to the Executive and to the Irrigation Committee, and intended only to carry out the intentions of both.

And let me say to the gentleman from Indiana, lest he charge that our action was the result of Executive dictation, that these changes were absolutely in harmony with the original bill, which I had introduced before Mr. Roosevelt succeeded to the Presidency, and with the platform of both parties.

Now, the gentleman refers to the Congressional campaign committee of the Democratic party as having assumed a jurisdiction that did not belong to it. Who pretends that the Democratic Congressional committee has a right to bind the conscience and mind of any member of its party on this floor?

But when the Democratic members from the entire region affected, and all the Democratic members of the Irrigation Committee of the House, and the Democratic members of the Committee on Rules were in favor of this measure as one in harmony with the party pledge in the national platform, it was the privilege and right of the Democratic Congressional campaign committee to express its views on the subject, and it did so, without a dissenting voice, in the following words:

Whereas the Democratic platform of 1900 declared as follows:

"We favor an intelligent system of improving the arid lands of the West, storing the waters for the purpose of irrigation, and the holding of such lands for actual settlers:" Now, therefore,

Resolved by the Democratic Congressional Committee, That we regard the pending bill for the irrigation of the arid lands of the West, which devotes the proceeds of the sales of public lands in the arid and semiarid States and Territories to the construction of storage and irrigation works, and makes each project self-compensatory by fixing the cost on the lands to be reclaimed, to be repaid by the settlers in ten annual installments, and also reserves the land so reclaimed for actual settlers and home builders, as complying with the pledge contained in the national Democratic platform, and we therefore favor the passage of said bill as a needed step in the line of domestic development.

I do not pretend for a moment that the action of the Democratic Congressional committee is binding upon any member of this House; but I do say that it is a persuasive utterance, indicating the opinion of Democrats upon this floor and engaged in important party work regarding a measure which has received the sanction of every Democratic member of the Committee on Irrigation and which will, I believe, receive the almost unanimous support of this side of the House.

Now, Mr. Speaker, I regret that the gentleman has raised the cry of party regarding a measure which is nonpartisan and which meets simply the platform requirements of both parties. I regret that we are limited in the time afforded for debate. I do not think the Committee on Rules responsible for that at all. Their intention was to give us three days, but the exigencies of public business required the cutting off of one day.

I wish to say that there is not a man from the arid regions who is not willing to meet the opponents of this measure in the forum of debate, and we appeal to the intelligent judgment of the entire House, and we Democrats on the Irrigation Committee appeal to the intelligent judgment of the members on this side of the House, as to whether this bill is not a wise and comprehensive measure, presenting an intelligent system, without expense to the General Government, for the reclamation of the arid lands, aiding the West to reclaim itself by the machinery afforded by this law, and, above all, holding that vast area for the unborn generations, generations to be born in your States of the East, in your States of the Middle West, and in your States of the South, to be held as a heritage for the entire people, North, South, East, and West, and to be dedicated forever to American home building, the true foundation of the Republic. [Applause.]

Mr. DALZELL. Now, Mr. Speaker, I ask for a vote.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

STATUE TO THE LATE MAJ. GEN. WILLIAM J. SEWELL.

Mr. PAYNE. Mr. Speaker, I ask for the immediate consideration of the order which I send to the Clerk's desk.

The Clerk read as follows:

Ordered, That the Senate be requested to furnish the House of Representatives a duplicate copy of the joint resolution (S. R. 100) authorizing the Secretary of War to furnish condemned cannon for an equestrian statue of the late Maj. Gen. William J. Sewell, United States Volunteers, the same having been lost or misplaced.

The order was agreed to.

On motion of Mr. PAYNE, a motion to reconsider the last vote was laid on the table.

IRRIGATION OF ARID LANDS.

Mr. MONDELL. Mr. Speaker, I move that the House now resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (S. 3057) appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

Mr. NEWLANDS. Will the gentleman withhold his motion? I want to ask for leave to print on this debate.

The SPEAKER. The gentleman from Wyoming moves that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of Senate bill 3057.

Mr. MONDELL. And pending that, Mr. Speaker, I ask unanimous consent that the gentleman from New York [Mr. RAY] may control the time against the bill, and that I may control the time in favor of the bill.

The SPEAKER. And pending that motion, the gentleman asks unanimous consent that he may control the time in favor of the bill, and that the gentleman from New York may control the time in opposition to the bill. Is there objection? [After a pause.] The Chair hears none.

Mr. MONDELL. Now, Mr. Speaker, I ask unanimous consent that all who may speak on the bill may have ten days to extend their remarks in the RECORD.

The SPEAKER. The gentleman from Wyoming also asks unanimous consent that all who speak on this bill may have ten days in which to extend remarks in the RECORD. Is there objection? [After a pause.] The Chair hears none.

The motion of Mr. MONDELL was then agreed to; accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. TAWNEY in the chair.

The CHAIRMAN. The House is now in Committee of the Whole House on the state of the Union for the consideration of the bill S. 3057, the title of which the Clerk will report.

The Clerk read as follows:

An act (S. 3057) appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

Mr. SHAFROTH. Mr. Chairman, I move that the first reading of the bill be dispensed with.

The motion was agreed to.

Mr. MONDELL. Mr. Chairman, this is a most important measure, a measure that is entitled to a very considerable length of time for consideration, but owing to the lateness of the session and the pressure of other public business, those interested in the measure have agreed to accept a rule providing only two days for consideration. It will therefore be necessary to be brief in the remarks which I may make on the subject, in order to give other gentlemen who desire to address the House an opportunity to do so.

A hundred years ago the enlightened statesmanship and prophetic vision of Thomas Jefferson overcame his misgivings as to certain limitations of the Federal Constitution and, illuminating that great instrument by the light of national destiny, constrained him to become the champion of the acquisition of the great province of Louisiana, which nearly doubled the territory under our flag. Then came the settlements and treaties which gave us the country "where rolls the Oregon," and later the uprising of Texas and the war with Mexico, which resulted in completing the expansion of our territory in a compact body westward to the Pacific and from the forty-ninth parallel of north latitude to the Gulf of California.

The greatest internal problem of our first century of national life was that of binding together and bringing into close touch

this tremendously extended and largely undeveloped territory and its widely scattered peoples, and in the accomplishment of that all-important consummation the establishment of a system of intercommunication by land and water was imperative and essential.

As the acquisition of Louisiana and other Western territory was in the face of much misgiving and not a little open protest on the part of some of our statesmen, so the solution of the problems of intercommunication, the importance of which the acquisition of that territory vastly increased, was only accomplished after the modification of certain views of constitutional limitations, and a keen appreciation of the unanswerable logic of our situation gradually led to a general acceptance of that view which not only commended but commanded Government appropriations for the improvement of interstate rivers and waterways and land-grant bonuses and cash loans for the construction of railways to bind together with pathways of steel the widely separated boundaries of the Republic.

In spite of the qualms and questionings of the strict constructionists of other days, I doubt if there dwells within the Republic to-day anyone who doubts the wisdom of that policy, in view of its beneficent results, which gave Government aid and credit to the solution of the problems of land and water communication, the lack of which more than once in our history caused misgivings with regard to our territorial integrity and interposed a serious barrier to our growth and development.

Happily for our people, the acute problems of intercommunication of our first century of national life have been solved. All portions of our country have been brought closely together by water communication, where possible, and by railway and telegraph.

Government aid having blazed the pathway for the iron horse, is no longer needed in that direction, but Government appropriations demanded by our largely increasing internal trade are more lavish than ever for the establishment and betterment of internal waterways and have even been extended to liberal appropriations for the protection of private property along the courses of great streams and for the purpose of furnishing facilities for purely local transportation by water.

IRRIGATION THE PARAMOUNT INTERNAL QUESTION.

As the first century of our national existence has seen the solution of the problems of transportation and intercommunication, the second century presents to us as the paramount internal question that of making available for human use and occupancy the vast areas which the fathers of our territorial expansion, with some misgivings and questionings, but with a patriotic hope which has been fully justified, added to our territory, and which national aid to the construction and betterment of lines of communication have brought together into a closely welded, mutually interdependent, and homogeneous whole.

Up to the time of the acquisition of Louisiana all of our territory was within the humid region, where crops suited to the climate and the soil could be readily produced by the clearing of the forests, and upon our vast extent of prairies in the Mississippi Valley by the turning of the sod and the planting of the seed; but the acquisition of the Western territory brought us face to face with a new problem, that of reclaiming the vast areas of arid lands and making them habitable, though it is true that neither the statesmen responsible for our early expansion or the hardy pioneers who first located in or explored the new region understood or appreciated the practicability or possibility of such reclamation.

Brought face to face with irrigation as crudely practiced by the Indians of the Southwest, and more intelligently by the Spaniards of the Pacific coast, our people regarded it more as one of the curiosities of an extraordinary climate and the peculiar practices of a strange people than an industry worthy of development, and, idle curiosity gratified, it was dismissed from mind as a unique and somewhat useful industry forced by local conditions, the practice of which might properly be left to the Indian and the greaser.

It is perhaps not strange that this should have been so, for of all the great peoples who have at one time or another dominated the earth's surface, established governments, founded institutions and systems of laws the Anglo-Saxon alone in the beginning of his racial development escaped the necessity of applying methods of irrigation to the soil in order to make it productive. The cradle of every other great race has been rocked by the invigorating breezes of an arid climate and lulled by the soft murmur of canal-borne waters; but the Celt, the Briton, and the Saxon occupied a territory watered by the rain of heaven, and not only had no practice, but lacked even legend or tradition of irrigation. On the contrary, they laid down and established a rule of law relative to rights in water essentially fatal to the development of irrigation, a rule peculiar to the race and differing from that of all the balance of the world. In a land of generous downpour, they developed the theory which expressed the idea that the rivers drain the lands, make them fit for cultivation and habitation, and run to the sea; therefore let them run unobstructed and unimpeded, while practically all the balance of the world established laws and customs in conformity with the truth that waters fructify and quicken life; therefore they should be diverted and applied to the soil to redeem the arid and increase the fruitage of the humid lands.

As the time passed, however, and considerable numbers of people were attracted into our arid region by the building of lines of communication, in search of minerals, to engage in stock raising, and other industries, the pioneer was attracted to the necessity as well as the possibility of development by irrigation, and he set about a practical demonstration thereof with characteristic energy. A people bound together by the fervor of a new faith, seeking a home in the Western wilderness, pitched their tabernacle within sight of the waters of the Great Salt Lake, and compelled by the necessities of their situation to begin the systematic development of extensive irrigation projects, by energetic cooperative efforts demonstrated anew what the western world had almost forgotten—that extensive areas may be developed and made to sustain a large population under irrigated agriculture.

THE EARLY DAYS OF IRRIGATION IN THE WEST.

In the early days of irrigation in the West only the waters of the smaller swift-flowing streams were utilized, as from these water was easily and cheaply diverted and applied to the lands of the adjacent valleys. As railroads were built and population pressed forward from the humid regions, attracted by the climate and resources of the country, the mining and trading centers grew into cities and towns and the demand for agricultural products increased. From this increased demand there came slowly an increased knowledge of the agricultural and horticultural possibilities of the region under irrigation, and gradually larger, more difficult, and more expensive enterprises were planned and executed, utilizing not only the natural flow of streams but waters conserved by storage as well, until practically every stream of any size in the arid region has been levied upon to a greater or less extent by the irrigator.

Slow as we were as a people to appreciate and understand the benefits of irrigation when its advantages and its necessity over a large portion of our country became clearly apparent, we took hold of the subject with characteristic energy and enterprise, and long before all of the wonderfully fertile humid lands of the Mississippi Valley had been settled and developed the Western pioneer began the conquest of the desert. Neither physical obstacles nor inherited water laws fatal to irrigation could long withstand his energy or stand in the way of progress. The one he overcame; the other he abrogated or modified, with the result that, taking into consideration the beginning, our progress has been reasonably satisfactory.

Up to this time there have been irrigated in the United States about seven and a half million acres, an area about equal to the combined land areas of New Jersey and Connecticut, or Maryland and Delaware, and distributed as follows:

State or Territory.	Acres.	State or Territory.	Acrer.
Arizona	185,396	North Dakota	5,202
California	1,446,119	Oregon	388,198
Colorado	1,611,271	Oklahoma	2,761
Idaho	602,548	South Dakota	43,010
Kansas	26,497	Utah	639,273
Montana	970,231	Washington	135,936
Nebraska	148,538	Wyoming	606,942
Nevada	504,168		
New Mexico	204,508	Total	7,510,598

This area, while not large as compared with the area which can ultimately be irrigated, is larger than the irrigated area of any other country save that of India. While it is only one-fourth as large as the irrigated acreage of that country, it is one-fourth larger than that of Egypt, where irrigation has been practiced for thousands of years.

WHY THE GOVERNMENT MUST UNDERTAKE THE WORK.

So far our irrigation development has been practically all the result of private enterprise, and in presenting this measure, which proposes certain undertakings by the National Government, the first query would naturally be, Why not continue development as in the past? Why call on the National Government to enter a field which so far has been entirely the theater of individual effort?

In the first place, it should be remembered, as I have stated, that the works so far undertaken have been largely of a simple character, presenting few engineering difficulties and intended only to supply single farms or limited areas of country. Where conditions of soil, climate, markets, and the possibility of producing tropical and semitropical products have seemed to warrant, larger enterprises have been undertaken, and in some

instances these enterprises have been expensive, intricate, and difficult, but unfortunately they have not in all instances been financially successful, owing largely to inability to control the lands watered and to apportion against and collect from them the benefit which they derived from the project.

It is not claimed that the limit of successful irrigation by private enterprise has been reached, nor is it intended by this legislation to usurp the proper and legitimate field of private enterprise, but rather to undertake works of such character and magnitude as under our land system private enterprise can neither successfully nor to the best interests of the people properly undertake. However, while it is hoped that private enterprise will still continue to carry on the work of irrigation reclamation and accomplish much, yet we have reached a point in the development by irrigation—in portions of the West where irrigation is the most needed, where there is the most urgent demand for it, where the irrigated lands will be the most valuable—where public agencies must be invoked before there can be any further considerable harmonious or proper development.

This situation is the result of a number of causes. Any irrigation enterprise to be successful must have a market for its wares. The projector of irrigation works must be assured that the lands proposed to be irrigated will bear the burden of the expense, and where the lands to be irrigated are wholly or largely public lands, subject to entry under laws which do not require reclamation, it is impossible for the private investor to secure this assurance. While the rumor of the probable construction of an irrigating ditch by private enterprise is generally sufficient to cause all the land irrigable therefrom to be immediately entered under the various land laws, unfortunately these entries, in a very great many cases, are not made with the purpose or expectation of purchasing water rights and irrigating the land, but largely with the hope of realizing on the increased value of the land after the construction of the ditch.

In other cases the entryman secures more land than is necessary for the support of his family or than he can afford to buy a water right for, and, the tenure or right of the company or association conveying the water being always limited, the incentive to the settler is to delay the purchase of the right to use water in the hope of making a better bargain later. Under this condition of affairs it is inevitable that the ditch builder should fail to realize a profit, oftentimes lose his investment, or be compelled to the alternative of securing, oftentimes by becoming a party to a violation of the spirit if not the letter of the land laws, title to the lands to be irrigated and applying the water with the hope of afterwards disposing of them.

It is true that the condition of affairs here outlined could be partially overcome by conveying large tracts of land to private individuals on the pledge of their reclamation, but this system, while violating every principle of American land policy, which has always been to provide homes on small farms to actual settlers on the public domain, would be open to the further criticism that it would not result in the reclamation of the land in the majority of cases.

Another serious obstacle to the undertaking of the larger and more intricate irrigation works by private enterprise lies in the fact that private enterprise must always look for a profit on its investment, and where an irrigation enterprise requires a considerable number of years for its complete development, interest charges become a very serious item, while the Government, interested only in the settlement of the lands, can well forego any interest on investments and be content with the return of the principal. Private enterprise, to be successful and command capital, must pay interest on the investment from the start, and thus many an enterprise which might ultimately have proven successful has been a disappointing failure because the first few years after its inauguration it failed to yield returns.

There is a certain class of irrigation works which not only are disappointing when constructed by private enterprise, owing to the difficulty of fixing and collecting the charges upon all the public lands benefited, but which by reason of their effect upon the flow of streams and therefore their importance to a large number of users, oftentimes in different States, should always be under public control. These are the large reservoirs and storage works at the headwaters and along the courses of streams, constructed for the purpose of impounding flood waters with a view of utilizing them to increase the flow of streams in the latter portion of the irrigation season, when under natural conditions they are the lowest—in other words, works to regulate stream flow.

Works of this character should never be in the control of individuals; and while it is exceedingly difficult where the lands benefited by them are largely public lands for private enterprise to secure returns on their investments in this class of work, even if that were possible, they should no more be controlled by individuals or corporations than should the entrance to a harbor or the mouth of a navigable river be so controlled.

It has been suggested that if private enterprise can not properly develop large irrigation systems the work might be undertaken by the respective States. There are many reasons why the States are not so well equipped to carry on this work as the Federal Government. In the first place, were the work carried on by the States, the disposition would be to utilize all of the waters flowing through a State within the State, provided there was no prior appropriation lower down on the stream, regardless of the most beneficial and economical development of the irrigation possibilities of the entire region. Further, the constitutions of some of the States forbid the undertaking of works of internal improvement; and even were the States the proper agency through which to carry on this development, none of the States in the arid region are financially able to do so.

It should be remembered that in the arid region the Government is the owner at this time of from 60 to 92 per cent of all the lands, and it is from the proceeds of the sales of these lands that it is proposed by the bill under consideration to provide for the reclamation of the irrigable portion thereof, and the National Government as the owner of the lands has a source of revenue the States do not possess. The States have no such source of revenue, and with only 8 to 40 per cent of their lands taxable and without large accumulations of wealth and personal property as sources of revenue, it is utterly impossible for them to secure funds with which to inaugurate the work.

The relative amount of lands reserved, subject to entry and in private ownership, in the States and Territories named in the bill are as follows:

State or Territory.	In private ownership.	Reserved.	Subject to entry.	Total.	Amount in public ownership.
	Acres.	*Acres.*	*Acres.*	*Acres.*	*Per cent.*
Arizona	5,736,258	18,285,008	48,771,054	72,792,320	92
California	41,857,242	16,063,670	42,049,008	99,969,920	57
Colorado	21,538,185	5,694,161	39,415,814	66,348,160	68
Idaho	9,070,953	1,747,311	42,475,176	53,293,440	83
Kansas	50,309,520	987,875	1,085,315	52,382,720	4
Montana	15,442,762	12,847,531	65,803,307	93,593,600	84
Nebraska	39,140,968	69,642	9,926,670	49,137,280	17
Nevada	3,031,006	5,983,409	61,322,225	70,336,640	96
New Mexico	16,454,495	6,385,181	55,589,124	78,428,800	79
North Dakota	24,583,098	3,370,491	16,956,491	44,910,088	45
Oklahoma	12,962,927	7,157,868	4,653,605	24,774,400	48
Oregon	21,992,596	5,500,821	33,784,023	61,277,440	63
South Dakota	24,534,450	12,802,946	11,869,004	49,206,400	50
Utah	4,537,917	5,487,668	42,515,855	52,541,440	92
Washington	20,069,148	10,764,568	11,913,164	42,746,880	53
Wyoming	6,781,366	7,995,018	47,656,896	62,433,280	90
Total	318,042,901	120,643,168	535,486,731	974,172,800	----------

THE URGENCY OF THE WORK.

Admitting, then, that the proper development of the arid region, under the present conditions, can only be undertaken and accomplished by the National Government, it seems to me that there should be no diversity of opinion as to the duty of the Government in the matter or as to the propriety and advisability of beginning this work in the near future, for I take it for granted that all will admit that it is not in keeping with sound public policy or enlightened statesmanship to delay or retard a reasonable and legitimate development of the agricultural possibilities of the arid portion of our country.

There is a crying need for the beginning of this work at once. In many parts of the West, where there is a demand for homes, private enterprise can go no further until the National Government shall have carried out certain initial works. In other parts of the West the lands are being slowly absorbed by those who are making ineffectual attempts against too great odds to carry on the work of irrigation unaided, or by others anxious to control large bodies of land for grazing purposes, and the work should be inaugurated before this sort of absorption has gone too far. Indeed, the urgency of the inauguration of the work of national irrigation has been apparent to every student of the subject for years, and agitation and effort to that end has, as everyone here knows, been for some time constant and continuous.

THE POLITICAL PARTIES ON IRRIGATION.

The great political parties of the country have not been unmindful of the duty of the National Government in this direction, and have declared in no uncertain terms on the subject, as follows:

REPUBLICAN PLATFORM OF 1900.

In further pursuance of the constant policy of the Republican party to provide free homes on the public domain, we recommend adequate national legislation to reclaim the arid lands of the United States, reserving control of the distribution of water for irrigation to the respective States and Territories.

As the Republican party has a well-earned reputation for the complete and speedy fulfillment of its pledges, we confidently expect that this measure, which is in harmony with the promise

of the party, will receive the support of all the gentlemen on this side of the Chamber.

The Democratic platform of 1900 contains the declaration:

We favor an intelligent system of improving the arid lands of the West, storing the waters for the purposes of irrigation, and the holding of such lands for actual settlers.

Our friends on the other side are to be congratulated on having made one pledge in their last national platform which can be fulfilled with honor to themselves and glory to the country, and therefore I am confident they will all vote for the measure.

THE PRESIDENT ON IRRIGATION.

No American President has ever been more thoroughly conversant with the conditions in and the needs of all portions of our country than President Roosevelt, and certainly none have been more heartily in sympathy with the hopes, aims, and aspirations of our people of all sections than he. In his message to Congress he voiced a statesmanlike breadth of view and indicated a masterful grasp of the great questions before our people for solution. In that notable state paper he gave especial prominence to the question of irrigation, and wrote partly as follows:

It is as right for the National Government to make the streams and rivers of the arid region useful by engineering works for water storage as to make useful the rivers and harbors of the humid region by engineering works of another kind. The storing of the floods in reservoirs at the headwaters of our rivers is but an enlargment of our present policy of river control, under which levees are built on the lower reaches of the same streams.

* * * * * * *

These irrigation works should be built by the National Government. The lands reclaimed by them should be reserved by the Government for actual settlers, and the cost of construction should so far as possible be repaid by the land reclaimed. The distribution of the water, the division of the streams among irrigators, should be left to the settlers themselves in conformity with State laws, and without interference with those laws or with vested rights.

* * * * * * *

The reclamation and settlement of the arid lands will enrich every portion of our country, just as the settlement of the Ohio and Mississippi valleys brought prosperity to the Atlantic States. The increased demand for manufactured articles will stimulate industrial production, while wider home markets and the trade of Asia will consume the larger food supplies and effectually prevent Western competition with Eastern agriculture. Indeed, the products of irrigation will be consumed chiefly in upbuilding local centers of mining and other industries, which would otherwise not come into existence at all. Our people as a whole will profit, for successful home making is but another name for the upbuilding of the nation.

The present Secretary of Agriculture and the Secretary of the Interior as well have borne testimony to the importance, from a national standpoint, of the questions of the development of the arid West, while scientists, students, business men, organized labor have all voiced their belief in the advisability of the undertaking by the Federal Government of the construction of certain classes of work for the purpose of building up homes and establishing communities in the regions now largely desolate and uninhabited.

At the beginning of the present session of Congress the Representatives from the 16 States and Territories embraced within the arid and semiarid portion of our country, believing that the time was ripe to present to the Congress a comprehensive plan of national undertaking of irrigation enterprise, formed a committee of 17 members, composed of Representatives and Senators from the region referred to, and this committee set about the formulation of a measure for the consideration of Congress. Most careful consideration was given to every detail of the proposed legislation, and after much discussion the measure was formulated and introduced in either House. Criticisms and suggestions were made relative to it, and as to the effect or intent of certain of its provisions, and after further thought and discussion the measure was finally amended in a way satisfactory, it is believed, to all of those favorable to national irrigation legislation and presented for your consideration. In my opinion no measure has ever been presented to this House more carefully thought out, and certainly no legislation has ever been presented to an American Congress which so carefully and faithfully safeguards the interests of the home builder. It is a step in advance of any legislation we have ever had in guarding against the possibility of speculative land holdings and in providing for small farms and homes on the public land, while it will also compel the division into small holdings of any large areas which may be in private ownership which may be irrigated under its provisions.

IRRIGATION NO EXPERIMENT.

In presenting to Congress this irrigation measure we are urging no experiment and exploiting no new theories. While we may have some doubts as to the truth in other fields of the old adage that "there is no new thing new under the sun," no student of irrigation will deny its axiomatic character with regard to that ancient and honorable art, and this applies not only to the central ideal—that of reclamation by irrigation of arid lands—but as well and as forcibly to the principles which underlie this measure, the policies which it outlines, the detail of administration which it provides. There is in it all no new thing. National expenditure, local administration, principles underlying and governing water rights, provisions insuring small individual holdings; all of them have been tested and worked out in widely separated regions under varying conditions since the very dawn of human history.

Twenty-seven centuries before the star above Bethlehem guided the wise men across the plains of Judea the government of the great King Menes built a mighty canal from the Nile and began the vast irrigation system which was the foundation of ancient Egypt's power and glory. Four thousand times has this good old earth swung around the fiery furnace of the sun since King Moreis in the development of that system constructed the first storage reservoir, and on the irrigated lands thus provided was developed that remarkable civilization whose great works are, after the lapse of all the centuries, the wonder of the world. In the very dawn of her history Assyria constructed irrigation works and converted the sterile valleys of the Euphrates and Tigris into fertile fields. Of all the mighty works of ancient Babylon none were so remarkable as her great artificial lakes and her irrigating canals hundreds of feet in breadth and hundreds of miles in length.

Rome carried with her victorious banners the art of irrigation all over the country; she swept from Africa to the British Isles, and built as permanently her water courses as she did her military roads.

The Moors found irrigation one of the established arts when they invaded Spain. Like wise men that they were, they perfected it. No man knows when irrigation was first practiced in India, though the lamentable history of a temporary decline in the practice of the art is written in awful records of famine and starvation. Fortunately later rulers of India have appreciated the fact that in irrigation lay the salvation of the vast population of that land, and nearly seventy-five years ago they began the construction of those great works of irrigation which have entirely put an end to famine in the region irrigated and greatly modified its rigors in all parts of the country.

To enumerate the regions where irrigation is now practiced is practically to name every important populous country on the globe, with the exception of some parts of northern Europe and Asia. Japan, China, Siam, Korea, Ceylon, India, Afghanistan, Turkey, Greece, Italy, Spain, France, Egypt and all the States of Northern Africa, Madagascar, South Africa, Australia, South America, and Mexico. In most of the countries enumerated the story of irrigation runs back to the very twilight of history, and in all of them the principles of irrigation have been more or less successfully worked out and crystallized into custom, regulation, and statute.

NO COMPREHENSIVE IRRIGATION EXCEPT THROUGH PUBLIC AGENCIES.

In all the history of irrigated agriculture, extending over a period of over four thousand years, no complete and comprehensive development by irrigation has been undertaken or accomplished except through public or semipublic agencies. The wisdom of the universal practice of mankind in this respect, under widely differing physical conditions and forms of law and government is abundantly demonstrated by our experience, beginning as it did in purely private undertakings, leading up through a gradual strengthening of the theory of public control of water used in irrigation to a realization of the necessity of public undertaking and control of certain classes of the works of irrigation.

A study of our conditions will convince any well wisher of his country that the beginning of a more systematic development of our arid region has been quite long enough delayed. In the thirty years between 1870 and 1900 we added to our cultivated area at the rate of between five and six million acres per annum. During that period the annual increase in the acreage planted to the three staples of wheat, corn, and oats alone was about three and one-half million acres per annum. For the future, our increases in cultivated area in the humid region of the country will only be such as is brought about by increased demand for agricultural products.

Of the public domain it may be said without fear of successful contradiction that there is left practically no considerable areas of agricultural land capable of producing good crops every year without artificial irrigation. It is true that in some parts of the Northwest there are limited areas of land which when cleared or drained will make fair farming land. There are scattered here and there throughout the arid region favorably situated districts limited in extent where under careful cultivation fair crops of certain varieties of agricultural produce may be grown by what is called dry farming. But these areas are widely scattered, and if we search all of the public domain, outside of Alaska, for land upon which any classes of agricultural crops can be successfully grown by dependence on natural rainfall after expensive preparation or by careful tillage, the sum total of all these lands could not by the most liberal estimate exceed in amount 15,000,000 acres, this being equal to the area which we have been adding to our cultivated lands every three years in the last thirty and the

final searching out, entry, preparation and utilization of the widely scattered tracts comprising this aggregate is a matter not of a few years, but of a generation at least.

The future additions to the farming lands of the country, then, so far as such additions shall come from the public lands, must be almost entirely from lands made available by irrigation.

We are now a nation of 76,000,000 people, increasing at the rate of 1,500,000 annually. When we had less than half our present population it was considered wise to provide opportunities for the establishment of homes on the public land. The wisdom of that policy has been abundantly demonstrated. Now that the fertile humid public lands have been practically all absorbed, to oppose legislation which has for its object the establishment of homes on the arid public domain and provide for our rapidly increasing population is to question the wisdom of the policy which we have hitherto pursued.

In order to meet the arguments and objections which have been offered to the general scheme of Government aid to the arid West, or to this measure in particular, it will be necessary and proper to consider the general plan and scope as well as the detail of the bill under consideration.

THE PROVISIONS OF THE BILL.

The bill (S. 3057) I will discuss in its amended form as presented to the House for its consideration. In the first place, this bill proposes that the proceeds from the sales of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, less the amounts earned by registers and receivers of land offices and the 5 per cent due to States, beginning with the fiscal year ending June 30, 1901, shall be set aside as a special fund in the Treasury, to be called the reclamation fund, to be used in the examination, survey, construction, and maintenance of irrigation works.

The unreserved public lands in the States and Territories named which become the basis of the fund, according to the terms of the bill, amount to about 535,000,000 acres. The proceeds from the sales of lands for the two fiscal years 1901 and 1902, which will be available soon after the passage of the bill, will aggregate something over $6,000,000—a fair sum with which to begin work—and it is estimated that the immediate annual income under the provisions of the bill will be from $2,500,000 to $3,000,000. To be more accurate, the average annual income under the bill for the past three years would have been $2,633,198; the respective amounts for the various States and Territories named in the bill during the fiscal year ending June 30, 1901, have been as follows:

State or Territory.	Fiscal year.	Receipts.	State or Territory.	Fiscal year.	Receipts.
Arizona	1901	$42,586.16	North Dakota	1901	$449,025.43
California	1901	205,030.40	Oklahoma	1901	370,427.13
Colorado	1901	252,277.00	Oregon	1901	364,761.47
Idaho	1901	206,449.94	South Dakota	1901	113,475.22
Kansas	1901	20,182.22	Utah	1901	98,329.22
Montana	1901	367,130.10	Washington	1901	257,046.22
Nebraska	1901	103,040.49	Wyoming	1901	206,863.87
Nevada	1901	9,008.61			
New Mexico	1901	75,091.83	Total	1901	3,140,725.31

The proceeds from the sales of public lands for the fiscal year 1901 were considerably higher than that for 1900, and the receipts for 1900 nearly a million higher than for 1899. The probability is that 1901 marked very nearly the high-water mark of public-land sales, and that the proceeds from the sales of public lands in the future will rather diminish than increase until such time as, under the operation of the bill, payments begin to be made on irrigated lands and from that time on receipts will increase as lands are irrigated and sold.

Section 2 of the bill provides for the making of surveys and examinations of proposed works and for report to Congress relative to same. Section 3 provides for withdrawal from public entry of lands required for any of the irrigation works and also for withdrawal, except from homestead entry of all lands to be irrigated. Section 4 provides for the construction of the works and for the apportioning of the cost of construction among the users of water upon the lands to be irrigated. Section 5 requires the entryman to irrigate his land, defines the terms and conditions under which land in private ownership may be irrigated and of the conditions of payments imposed on the settler on public lands and the water user on private lands. Section 6 provides for the form of local control and care of works by the settlers common in the irrigated country. Section 7 provides means for acquiring lands and water rights where same may be necessary.

Section 8 follows the well-established precedent in national legislation of recognizing local and State laws relative to the appropriation and distribution of water, and instructs the Secretary of the Interior in carrying out the provisions of the act to conform to these laws. This section also clearly recognizes the rule of prior appropriation which prevails in the arid region and, what is highly important, specifies the character of the water right which is provided for under the provisions of the act. Section 9 declares a policy of systematic and harmonious development of the irrigation possibilities of the arid region.

OPERATIONS UNDER THE MEASURE.

Having thus briefly outlined the provisions of the bill, I can perhaps best illustrate its workings by indicating how the Secretary of the Interior, as the agent of the Government under this act, would proceed. Should the bill become a law the Secretary of the Interior would proceed to make preliminary surveys and examinations in various portions of the arid region, utilizing, of course, the surveys which have already been made by the Government. These surveys and examinations would be made with a view of determining the most feasible and practicable projects, as well as those deemed, under all surrounding conditions, to be the most urgent.

The examinations would necessarily be of a variety of projects, including large diversions, and reservoir projects as well as projects combining both diversions and conservation of water. Before the beginning of the survey and examination of a project, or at such time during its progress as seemed advisable, the Secretary of the Interior would withdraw from entry the land required for the irrigation works, and by designation of the lands which it is proposed to irrigate they would be withdrawn from entry except under the homestead law, and become subject to all charges, conditions, and limitations of the act, should the project be constructed.

It having been ascertained that a sufficient supply of water for the irrigation of the lands in question was available and unappropriated and the feasibility of a project having been determined, the Secretary of the Interior would proceed to make the appropriation of the necessary water by giving the notice and complying with the forms of law of the State or Territory in which the works were located. He would then estimate the cost of the proposed works, and having determined upon their construction would advertise for bids for same, and would thereupon give notice of the limit of area per entry under the particular project, which limit under the provisions of the act would "represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question. At the same time notice would be given of the charges to be made per acre upon each entry and upon lands in private ownership which might be irrigated by the waters of the works in question, which charges are to be determined with a view of returning to the reclamation fund the cost of construction, and be apportioned equitably."

The notice above referred to having been given, all entrymen on the lands proposed to be irrigated are bound by its provisions and all entries of the public lands subject thereto. The work of construction having been inaugurated, it is expected that settlers under a project would be able to secure employment thereon and thus support themselves until such times as water was available for their lands and crops could be produced. In order that settlers may have this opportunity of employment, it is provided that no Mongolian labor may be employed upon the works.

Under nearly every project undertaken by the Government there will undoubtedly be some lands in private ownership; and it would be manifestly unjust and inequitable not to provide water for these lands, providing their owners are willing to comply with the conditions of the act; and in order that no such lands may be held in large quantities or by nonresident owners it is provided that no water right for more than 160 acres shall be sold to any land owner, who must also be a resident or occupant of his land. This provision was drawn with a view of breaking up any large land holdings which might exist in the vicinity of the Government works and to insure occupancy by the owner of the land reclaimed.

As to the public lands, the entryman must not only reside upon his claim five years, but he must also irrigate at least half of it and make all the payments required before securing a patent to the same and a water right for its irrigation.

This is the first land law presented to Congress which has proposed the reduction of an agricultural entry to less than 160 acres and which required continuous residence upon the land for five years as a prerequisite to perfection of title.

No law ever presented to any legislative body has been so carefully drawn with a view of preventing the possibility of speculative ownership in lands, and I appeal to the venerable gentleman from Pennsylvania, the father of the House, the gentleman who is responsible for the homestead law, which did more to build up this nation than any law ever written on the statute book, in whose footsteps we have followed in providing a homestead for the arid as he did for the humid lands. I ask him, inasmuch as we have thrown further safeguards around the public lands than he felt necessary in his act, to heartily support this measure.

He made it possible to open up to settlement a limitless area of fair and fertile land, and the settler did not pay a penny for those lands. He gave the settler the opportunity to commute his holdings in twelve months, paying $1.25 an acre to secure full title. We provide that he shall go out on the desert on land now valueless and that he must reside there five years; pay the Government for its expenditure in bringing the water to the vicinity of his land before he can get a title.

Mr. GROW. If the gentleman will allow me, the original homestead act required them to occupy the land for five years.

Mr. MONDELL. I am delighted to know that and to have my attention called to it, because it shows that we have returned to the wisdom of my friend from Pennsylvania; we have returned to the original homestead proposition, and I trust that never more shall we depart from it.

WATER RIGHTS.

The main-line canals having been constructed by the Government, the entryman or landowner would proceed to the construction of such laterals as were necessary for the irrigation of his own tract and the preparation of the same to receive the water. The water having been beneficially applied and payments having been made under the provisions of the bill, the water right would become appurtenant to the land irrigated and inalienable therefrom. The water rights provided by the act are of that character which irrigation experience has demonstrated to be the most perfect.

The settler or landowner who complies with all the conditions of the act secures a perpetual right to the use of a sufficient amount of water to irrigate his land, but this right lapses if he fails to put the water to beneficial use and only extends to the use of the water on and for the tract originally irrigated. These most important provisions of the law prevent all the evils which come from recognizing a property right in water with power to sell and dispose of the same elsewhere and for other purposes than originally intended. This is an advance over the water usages of most of the States, and it is not denied that making water rights appurtenant to the tract irrigated will in some instances work hardship, but it is believed that it is much better to risk the individual hardships which will inevitably occur under a provision of appurtenance than to risk the evils certain to result from unlimited authority to transfer water rights.

Following the usual custom in the arid region, it is provided that when payments are made on a major portion of the lands to be irrigated from any project the management of and maintenance thereof, at their own expense, shall pass to the owners of the land irrigated, under such rules and regulations as the Secretary of the Interior may prescribe, and at this time the Government is relieved from all further expense in the maintenance of the distributing works.

Inasmuch, however, as it is deemed wise, for the present at least, that Congress shall have full control over storage reservoirs and works for the impounding of waters for the reason that works of this class affect a large number of water users—and there is always a possibility of the opportunity and advisability of increasing the capacity of such works—it has been provided that they shall remain for the present under the management and control of Congress, though the probability is that ultimately, when permanently established, it will be deemed wise and advisable to transfer them also to local control.

LOCAL CONTROL OF APPROPRIATION AND DISTRIBUTION OF WATER.

Every act since that of April 26, 1866, has recognized local laws and customs appertaining to the appropriation and distribution of water used in irrigation, and it has been deemed wise to continue our policy in this regard. It is not claimed that the State and Territorial laws relative to the use of water in irrigation are by any means perfect. The mistake was made in the early days of irrigation in some of the States of brushing aside and ignoring the ancient, just, and equitable Spanish and civil laws relative to the use of water and of recognizing beneath the brazen sky of a parched and arid region the theories of water developed in a tight little island soaked in a perennial downpour and enveloped in little less than perennial fog; but in spite of our bad beginning we have made wonderful progress in legislation and in practical rules andusages. The effect of the passage of this bill will be to further encourage improvements in local laws, rules, and regulations. They are now, it is believed, in every State and Territory in the arid region sufficient to fix and guard the rights under this bill.

Nothing is more important in an irrigation system than the character of the water right, and while some of the States in the region in question recognize rights differing from those provided in this act, rights of the character herein provided are recognized as being the best and are fully protected by the local laws and tribunals.

Mr. ROBINSON of Indiana. Mr. Chairman, I do not wish to interrupt the gentleman without his consent, but I should like to ask him two or three questions.

The CHAIRMAN. Does the gentleman from Wyoming yield to the gentleman from Indiana?

Mr. MONDELL. My time is very short, but I should like to answer the gentleman. What is the gentleman's question?

Mr. ROBINSON of Indiana. One is upon the subject of national or State control.

Mr. MONDELL. I am very glad to answer that.

Mr. ROBINSON of Indiana. I will state both of them at once. The other is as to taking out of the Treasury of the United States, as I contend this bill provides for doing ultimately, of funds set aside for our agricultural colleges.

Mr. MONDELL. Well, I will say to the gentleman, answering his last question first, that the funds for the support of agricultural colleges now come out of the United States Treasury if the proceeds from land sales are not sufficient for that purpose. Provision was made for that in the so-called free-homes bill, for which I hope the gentleman voted.

Now, as to State control over appropriation and distribution of water, I will say to the gentleman that there is no reasonable ground for disagreement on that point. We began to legislate in regard to the use of water in irrigation in 1866. We have legislated continuously along one line. The President in his message declared in conformity with all the legislation which had preceded. The Republican platform declared in conformity with that legislation.

The act of July 26, 1866 (14 Stat. L., 256; R. S., 2239), the first Federal legislation on the subject of rights to the use of water on the public domain, clearly recognized local control over such water in the following terms:

> Whenever by priority of possession rights to the use of water * * * have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of the courts, the possessors and owners of such vested rights shall be maintained and protected in the same.

The act of July 9, 1870 (16 Stat. L., 218; R. S., 2340), confirmed the provisions of the statute of 1866, as follows:

> All patents granted or preemption or homesteads allowed shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts.

And the act of March 3, 1877 (19 Stat. L., 377), still further recognizes rights obtained under local laws, and fully recognizes the right of appropriation.

The act of March 6, 1891 (26 Stat., 1095, 1102), grants the right of way through the public land for the construction of reservoirs, canals, and ditches, provided that the privilege granted "shall not be construed to interfere with the control of water for irrigation and other purposes under the authority of the respective States or Territories."

The act of June 4, 1897 (30 Stat., 1136), referring to forest reserves, provides for the use of waters on such reserves "under the laws of the State wherein such forest reserves are situated."

There are several other acts of Congress recognizing the control of the States over the use of waters within their borders; one being the act of March 2, 1897, recognizing the control of the State of Colorado over the waters which might be impounded in a certain reservoir site.

There have been a number of decisions of the General Land Office and regulations issued by the same authority recognizing the doctrine of State control. In the circular of February 20, 1894, on page 169 the following language is used:

> The control of the flow and use of the water is therefore a matter under State or Territorial control.

And in the decision in the case of H. H. Sinclair et al. (18 L. D., 573) it is said:

> The act of March 3, 1891, deals only with the right of way over the public land to be used for the purposes of irrigation, leaving the disposition of the water to the State.

The General Land Office in operating under the desert-land law, recognizes only water rights certified by State authorities.

The Supreme Court has also in several decisions recognized the right of the State to regulate and control the use of water within its borders. And turning to political and administrative declarations we find that the Republican party in its platform of 1900 in its irrigation declaration used the following language:

> Reserving control of the distribution of water for irrigation to the respective States and Territories.

President Roosevelt in his message said:

> The distribution of the water, the division of the streams among irrigators, should be left to the settlers themselves in conformity with State laws and without interference with these laws or with vested rights.

Now, I hope I have answered the gentleman, and I trust he will not interrupt me further, much as I would be pleased to answer him, for my time is limited.

The provisions of the bill in this regard may be considered ideal, and at the same time extremely practical. The settler is provided with the best form of water right, and the protection of this right and the proper distribution among users under these

rights becomes at once a matter of local concern, and the expenditures relative thereto are borne locally.

The provisions of section 9 relative to the distribution of the fund are believed to be wise and equitable. The fund may be used at any point in the arid region, but ultimately each State and Territory which has feasible and practicable projects is to receive the benefit of at least half of the proceeds of the sales of public lands with such State.

It will be seen from this brief statement of the form and character of the proposed legislation that it is simple in its operation; that it is calculated to provide homes on the public domain in small tracts for actual settlers; that it invites no conflict between Federal and State authorities; that it will reduce the size of private holdings in the arid region, and that it will tend to a harmonious development of all parts thereof.

AS TO THE CONSTITUTION.

The measure has been attacked on constitutional grounds. I am not a lawyer; therefore can not claim to be an expounder of the Constitution of the United States. As a layman I venture to express the hope that our Constitution, which, it is held, empowers us to spend hundreds of millions in distant parts of the earth for the benefit of other peoples, does not impose barriers to the development of our own country. I am one of those who believe the Constitution grants us the power as a people to do our duty abroad, though it cost precious blood and countless treasure. I hope that great instrument does not interpose obstacles to a peaceful conquest of the rebellious forces of nature in our own country, particularly when it can be accomplished without cost to our people. This is not a proposition to use the public revenues for the work of developing the arid region. If it were, and in the form of a loan, reimbursable as under the provisions of the bill, I can not understand how it would be any more subject to the objection of being unconstitutional than was Government aid in the building of the transcontinental railways; but there is no necessity of discussing that point, for this is a proposition only to use the proceeds of the sales of certain public lands for the purpose of making other lands salable.

Under the Constitution the Congress has the power to dispose of and make all needful rules and regulations respecting the public lands. It can give away all the public lands or any portion of them or sell and dispose of them in any way it sees fit, and certainly this power includes the power to dispose of the public lands in the manner we propose. Under this legislation we constitute a trust fund of the sales of public lands to be used for the purpose of making other lands habitable, and the authority of Congress to use the proceeds of the sales of public lands for so laudable a purpose has never been, so far as I know, denied or disputed, except by the gentlemen who filed a minority report in opposition to this measure.

THE VIEW CONGRESS HAS TAKEN.

A review of Congressional action in the disposition of the public lands and their proceeds for the past forty years clearly demonstrates two facts: First, that the power of Congress over the disposition of the public lands is plenary; second, that the public lands and the proceeds thereof have been considered, not as a source of public revenue, but as a trust to be used for the settlement and development of the country and for the benefit of the people.

In the past forty years among other dispositions of the public lands have been the following:

		Acres.
Disposed of under the homestead act (approximated)		128,157,074
Grants in aid of railroads and wagon roads:		
Patented up to June 30, 1901	95,399,652	
Estimated grants not patented	45,000,000	
		140,399,652
Grants to States for canal purposes		4,433,073
Grants to States for river improvement		1,406,210
Approved to States as swamp lands June 30, 1901		64,498,757
Grants to States for educational, charitable, penal, and reformatory institutions, for public buildings, public improvements, reclamation, and other purposes		109,100,238
Total		447,995,004
In addition to the above there are swamp-land claims unadjudicated, estimated at about		6,500,000
Total		454,495,004

Congress has not been less liberal in the disposition of the proceeds of the sales of public lands than in the disposal of the lands themselves, and in its action in regard thereto has evidently been guided by the same policy—namely, to treat these sums as funds held in trust for the people, and has made the following disposition of them:

For support of colleges of agriculture and the mechanic arts	$11,602,000.00
Agricultural experiment stations	9,968,734.05
Common schools, internal improvements, and other purposes, 5 per cent on sales	12,100,296.56
Swamp land, cash indemnity	2,036,733.58
Total	35,707,764.59

If Congress has the right, which has never been denied, to give away public lands, with or without stipulation as to their use and final disposition, and to appropriate the proceeds for a wide range of purposes for which it is somewhat doubtful if the funds derived from taxation of the people could be used, it is clear that Congress has the authority, as we propose, to provide for the creation of a trust fund from the proceeds of the sales of public lands and to direct the use of this fund for the purpose of making other public lands salable and useful with a view of transforming deserts into habitable regions and making possible the great increase in the general wealth, power, and prosperity of the country which must follow such development.

The minority report pays a great deal of attention to section 7 of the proposed legislation. In fact, about half of that elaborate report is devoted to a labored effort to prove that the Federal Government has no authority to condemn lands and water rights for the purposes of this act. The gentleman who wrote that report might have saved himself a great deal of trouble. Personally I agree with his contention on that point, but the bill does not contemplate the undertaking which he so elaborately argues is unconstitutional, and if it did contemplate it the question of whether or not it could be done is of relative unimportance.

In some of the arid States land and water rights can be condemned for the purposes contemplated in this bill, and in such States the Secretary of the Interior would have as much authority to condemn as any other individual, and no more. Where the State laws do not recognize the right to condemn property for the purposes contemplated in the act, it will not be condemned, and there is the end of it; but the power to condemn water rights and lands is by no means necessary for the carrying out of this act, and where the power is possessed it would in all probability be very seldom exercised; and where the State laws do not authorize condemnation, and projects can not be carried on without condemnation, those particular projects will not be undertaken, and others, where there is no such obstacle, will.

UNFOUNDED FEAR OF AGRICULTURAL COMPETITION.

One of the alleged arguments used against this measure is that it would be unfair to the farmers of the country because it would increase the acreage of our cultivated lands and the aggregate of agricultural produce, and thus tend to keep down farm values and the prices of farm products. The very statement of this ground of opposition is sufficient to indicate its selfish, narrow, provincial, and unstatesmanlike character. If arguments of this sort had been made by the people of the East against the enactment of the homestead law they might have had some force and justification, for that law opened in competition with the comparatively unfertile lands of the seaboard and the Alleghenies the marvelously rich and fertile lands of the Mississippi Valley, which required only the turning of the sod to produce bountiful crops, and which were granted to the settlers without any payment whatever.

A speech made on the floor of the House early in the session on this subject sounded like a belated protest against the adoption of the homestead policy of forty years ago rather than as an argument applicable to the legislation now proposed, for it came from a gentleman who represents a district which at the time of the passage of the homestead law was almost exclusively agricultural and whose farmers did undoubtedly feel keenly the effects of the passage of the act which opened to free settlement the lands of the Mississippi Valley, but his arguments could scarcely apply to legislation which proposes the gradual development of the irrigation possibilities of a region from a thousand to two thousand miles removed, whose products could by no possibility compete with the products of the farms of his district, but the opening of which would afford opportunity for the farmers' sons of his region to secure a home in the West, not free, as under the homestead law in the Mississippi Valley, it is true, but by the payment through a series of years of the expenditures made by the Government, and thus aid in the development of a great region which will furnish splendid markets for the manufactured products of the region which he represents.

Some opposition has also been voiced to this measure by a gentleman representing a fair and fertile district in the Mississippi Valley, where most of the lands now occupied by his constituents were given them by the Government under the provisions of the homestead law. It seems scarcely fair that a gentleman from that great valley, whose wonderful agricultural development was made possible by the bounty of nature and the beneficence of the Government, whose constituents are now obtaining the best average prices for their products they have ever received, should oppose a measure which, instead of giving fertile and humid lands free to the settler, simply seeks to make it possible for courageous and industrious people to redeem lands now barren, by the laborious processes of irrigation, and the repayment to the Government of its expenditures in bringing water within their reach.

As a matter of fact, the fears of competition of irrigated lands with the farms of the humid portion of our country are entirely without foundation. We have reached the end of rapid increases in cultivated acreage of our farm lands in the humid belt. The average annual increases of 5,000,000 acres of a few years ago has already diminished considerably, while our increases in population grows larger year by year. At present it is about 1,500,000 per annum.

Reclamation by irrigation is a slow process at best, and the increase in acreage is gradual. With all the cheapest and most feasible projects to work upon in forty years, we have irrigated fewer acres than the farmers of the humid region have brought under the plow in several single seasons in the past twenty years.

Assuming that the expenditure by the Government on the projects undertaken under the bill shall average $10 per acre and the fund would only furnish water for from 250,000 to 300,000 acres annually, and this total would only be reached five or six years after the work was inaugurated, should the Government expenditure average less per acre by half the maximum increase would ultimately be half a million acres or one-tenth of our average increase in acreage for the past thirty years.

Even if it were possible to rapidly increase, under the provisions of this bill or by other means, the irrigated area of the country the products of such lands would not and could not successfully compete with the products of the fertile lands of the humid regions. In the first place, the great staples of the country can not generally be so successfully or so cheaply produced under irrigation as by natural rainfall. Little corn is or ever will be grown on the irrigated lands of the West. The production of cotton has never been undertaken and probably never will be to any extent on irrigated lands in the United States. The production of cereals so far in the irrigated portions of the West has not kept pace with the local demand.

If by any possibility there should be any surplus of wheat in this region, it would find its market in the Orient rather than in competition with the wheat of the humid region. The products of the northern half of the arid region will undoubtedly continue to be, as now, very largely alfalfa and other grasses necessary to supplement the pasturage of the surrounding grazing regions in the growth and preparation of live stock for fattening in the corn belt of the Mississippi Valley and crops and products not grown elsewhere or necessary for the partial supply of a local demand. In the southern portion of the region will be grown tropical and semitropical fruits and products to take the place of products of the same character which are now largely imported.

AS TO THE FEAR OF VAST OUTLAY.

The opponents of this measure have claimed that it would lead to a vast expenditure by the General Government, and the most exaggerated statements have been made as to probable aggregate outlay. It should be borne in mind that it is not proposed to take a penny for the work contemplated out of the public Treasury. Provision is made whereby the arid region shall reclaim itself by utilizing the sale of public lands there for that purpose. By no possibility can the expenditures under the bill exceed the proceeds of the sales of the public lands in the region affected by it, and this is not a direct expenditure, but is rather in the nature of a loan, inasmuch as the settler is to pay to the Government the cost of the reclamation of his land, and in this way the money paid out for the construction of the works is returned to the Treasury. It is true that if the bill becomes a law and works satisfactorily, in the course of time a large sum of money will be spent by the Government in the construction of irrigation works, but under the provisions of the bill these sums are to be repaid, so that the reclamation fund, instead of decreasing, will constantly increase. The only actual expenditure under the bill not reimbursable would be certain items of administration, surveys, and examinations of projects the construction of which for one reason or another might not be undertaken.

It is true that the argument is made that while the bill provides for the repayment to the Government of the cost of construction of irrigation works, if the bill were passed members of Congress from the districts and States interested would soon be clamoring for the relief of their constituents from these payments. This argument is founded on a misunderstanding of the conditions in the arid region. It should be remembered that the lands which will be irrigated under Government works will be in the vicinity of large areas of land irrigated by private, cooperative, and corporate enterprise. Those interested in and dwelling upon the lands so irrigated would earnestly protest against the settlers in their own regions and vicinity living under the Government works being relieved from their payments, as that would have a tendency to lower the value of all irrigated lands in the region and work a hardship on them. Further than that, those in one part of the arid region who were waiting for the development of irrigation in their vicinity and who could only hope for such development by the replenishment of the fund, would object seriously to any legislation which would relieve anyone from payments under the bill and thereby delay the inauguration of works in their vicinity.

Let us admit for the sake of argument that no repayments will ever be made by any settler under the works contemplated by this act. In that event, as the expenditures are limited to the sums received from the sales of public lands, there would be no expenditure of moneys raised by taxation. I have called attention to the fact that in forty years we had disposed of, under the homestead law as grants to railways and States, over 450,000,000 acres of land and over $35,000,000 of the proceeds of the sales of land, and these lands were, many of them, rich and valuable; most of them would produce a crop without irrigation; so that if we disposed of the proceeds of the 535,000,000 acres of lands in the States named in this bill for the development of the region we would only be following our policy since 1860.

Private enterprise, stimulated by the work performed by the Government and encouraged to undertakings now impracticable by growth in population and extension of lines of communication, will undoubtedly carry on irrigation development and reclamation in the aggregate more rapidly than will be accomplished by the works constructed under the provisions of this bill.

BENEFITS TO THE SEMIARID AND ADJACENT REGIONS.

The bill provides for the sinking of artesian wells, with a special view to the development of irrigation possibilities by this method in the semiarid region. It is hoped that test wells will demonstrate the existence of extensive artesian basins throughout western Kansas and Nebraska as well as elsewhere in the region. The semiarid States which receive their waters from the arid mountain States will not only have the benefit of all the storage and diversion undertaken with a view of reclaiming lands within their borders, but will also be benefited by every storage and diversion work undertaken and accomplished at the headwaters and along the upper courses of the streams. The storage works will hold back flood waters which would otherwise go to waste or cause destruction, and these waters utilized in connection with the natural flow of the stream for the irrigation of large tracts of land would in a short time convert those tracts, now absolutely dry, into water-soaked areas, the seepage from which returning to the streams would produce a largely increased and uniform flow in the lower courses of the rivers at a time when under present conditions the streams are lowest.

The great value of storage and irrigation at the headwaters of streams has been abundantly demonstrated both in the United States and abroad, and we may confidently expect that the time will come when storage near the headwaters and its use in irrigation along the courses of many of the large streams in the arid and simiarid regions which are now generally dry, or nearly so, in the late summer will entirely change their character and cause them to become perennial streams of uniform flow.

The proposed legislation is of vast importance and will be far-reaching in its effect, for it outlines a plan and inaugurates a policy which it is believed will lead to the reclamation of the arid and the semiarid lands of the West, so far as that reclamation is possible with the available water supply. The total area which may be ultimately reclaimed it is impossible at this time to intelligently estimate, for it will depend largely upon what proportion of the water supply of the region can be conserved and applied to the soil with an outlay per acre which will be warranted by the productive capacity of the land irrigated, and the estimates of the acreage which can be irrigated, varying as they do from 40,000,000 to 75,000,000 of acres, measure the different views as to the expenditure per acre which may be ultimately justified by the demand for, or the value of, irrigated lands.

The reclamation from the desert of these vast acreages which will necessitate the conservation within the arid regions of a large portion of the waters that now run to waste in flood times and winter flows will not only make possible a largely increased population and the addition of vast wealth to our country, but will have a marked effect upon the climate and climatic conditions of all the western portion of the valley of the Mississippi by reason of the tremendously increased evaporation from the irrigated areas and, in my opinion, it is no exaggeration to say that the benefits to the irrigated country will not be greater than those conferred upon the adjacent territory, as the effect of that irrigation in increasing the humidity of the entire region, in cooling the lair of the siroccos that now blow from the arid plains, and thus preventing the present oft-recurring and disastrous droughts.

THE DUTY OF THE GOVERNMENT.

I am of the opinion that an imperative duty devolves upon the American Congress to lend assistance to the development of the great arid and semiarid portion of our country now but sparsely settled, but capable when fully developed of maintaining a large

and prosperous population. In this territory must be found homes for the sons of the farmers of the Eastern and Middle States who may desire to take Horace Greeley's advice to "go West and grow up with the country." In this region lies the best and most hopeful field for an increased market for American manufacturers, not only among those who shall occupy the irrigated farms, but also among the great mining and urban populations which will be established there.

To aid in the reclamation of the desert and in establishing there a home-owning population who will vastly increase the strength and prosperity of the entire nation is not only a most inspiring undertaking, but is a duty which the Government can not escape, which is paramount in importance to every other duty now laid upon the American people. It is a duty which every government since the dawn of recorded history occupying an arid region has recognized and fulfilled. Surely this great and enlightened Government will not be less faithful in assuming its responsibilities in this regard than were ancient Egypt and Assyria, and in the latter days have been the Governments of India, Spain, and Italy.

It should be borne in mind that irrigation is not an experiment; that it was practiced before the dawn of recorded history; that under its practice man first attained a high degree of civilization; that through its efficiency the great nations of antiquity established and maintained their might and glory. Neither is irrigation a new question in the United States. With the exception of India alone, we have a larger irrigated area than any country on the globe. We have met successfully practically every question, legal, financial, and engineering, which irrigation can present; so that there is nothing in the nature of an experiment in the work which it is proposed that the Government shall undertake.

The plan presented for the prosecution of the work proposed is a simple one. It imposes no dollar of taxation upon any American citizen, recognizes the dual character of our Government, and, inviting no conflict of authority, provides a business-like method for the accomplishment of great undertakings and maintains the American principle of small farms under water rights ample and secure. No nation confronted with an imperative duty of far-reaching importance, the fulfillment of which promised to add so much to its strength and dignity, has had presented to it a solution so simple, with such promise of successful outcome.

If he is a public benefactor who makes two blades of grass grow where only one grew before, how fully assured may we be of the gratitude of our countrymen in lending our influence to this legislation which shall make possible the transformation of vast areas now dreary and verdureless into fertile fields yielding the cheering vine and the sustaining grain, which will substitute for the weird cry of the coyote over the lonely wastes the hum of peaceful industry and the sweet tones of village bells.

Plato tells us of the lost Atlantis sunk beneath the heaving bosom of the briny deep, of her stately cities and the perennial verdure of her irrigated fields and vineyards. We have held old Plato a dreamer, but we shall hail him as a prophet, for we shall make his legend a reality; we shall raise the fair and verdant Atlantis not from the oceans, but from the desert's wastes; we shall there renew her irrigating canals, restore her fields and gardens, rebuild her cities, and reflect the fairest legend of the classic past in the splendid reality of a happy future. [Applause.]

Mr. RAY of New York. Mr. Chairman, I am exceedingly sorry to be compelled, from a sense of public duty, to oppose the gentleman's bill, intended, as he intimates in closing, to destroy the coyote on the desert plains of the great West. I think the gentleman has described its purpose very accurately, although he did refer to Plato and said something about restoring gardens and fruitful fields in Egypt and Asia and all that sort of thing. That is all very beautiful and would be all right in the West if the people who are to enjoy the benefits of the scheme of the gentleman were to pay the expense and it were within the legitimate scope of our powers to enact this legislation.

This is a great country indeed. We have nearly eighty millions of people. We have millions of square miles of territory. We have rocky lands, swamp lands, hill lands, and mountain lands. But, in my judgment, the time has not come when the taxpayers and farmers of the East can properly or legitimately be called upon to contribute to the development of farms and farm lands in the great West. The time has not come when they are called upon to consent to the taking by the Government of money that belongs to all the people for the improvement of lands in the States and Territories of the great West. The benefits of such a scheme will inure solely to the people of those States and of those Territories. We all concede, we must concede, that there are millions of acres of arid and semiarid lands in the great West, and perhaps millions of these acres—certainly thousands of these acres—may by irrigation be made productive. No one disputes that.

But the question is when and how shall this be done; at whose expense shall it be done? The scheme is that we take the money derived from the sales of public lands, place them in a fund to be known as an irrigation or reclamation fund, then to enter upon the construction of vast reservoirs for the storage, they say, of surplus waters—that is, in the rainy season they propose to keep back all the surplus waters, then build canals that will carry those waters to various parts of the lands to be irrigated and use them in the dry season for the irrigation of those now desert lands.

Considerable has been said by the gentleman who has preceded me, an advocate of this bill, to the effect that if the scheme is adopted it will give free homes to settlers upon these lands in future years. Free homes! and he claims that it is in accord with the idea of the gentleman from Pennsylvania [Mr. GROW] to provide "free homes." Why, Mr. Chairman, what is this scheme? I have in my hand, and under the liberty to print already given I shall print in the RECORD as a part of my remarks, the history of one of these pet schemes, the pet scheme of the Interior Department, the first one of them to be inaugurated, if I understand the matter correctly, and under it the cost of an acre of land to the settler is to be $21 per acre. In other words, he is to go into Wyoming, I think it is—perhaps I have mistaken the State, but it is in that vicinity. I refer to the Milk River irrigation scheme.

Mr. SHAFROTH. Will the gentleman yield to me?

Mr. RAY of New York. I will surrender my time for a question only.

Mr. SHAFROTH. I want to ask you whether you do not recognize that under this bill the settler gets the land free, because he has got the right to exercise his homestead right, but he pays for the water right?

Mr. RAY of New York. An acre of arid land that a coyote can not live on is not a free home to any human being, and when you undertake on the floor of this House to say that you are conferring a benefit on an American citizen by allowing him to exercise his right to take 160 acres of desert land as a free home you are stating a ridiculous proposition.

Mr. SHAFROTH. You admit that he need not take it unless he wants it?

Mr. RAY of New York. Certainly.

Mr. SHAFROTH. And if he does, he does it for his own advantage?

Mr. RAY of New York. I admit that, and everybody knows it.

Mr. MONDELL. Will the gentleman permit an interruption?

Mr. RAY of New York. No; I can not. I understand your scheme. I have been on the committee for three years. I have heard this wild, improvident scheme discussed in all its aspects—from all its different standpoints. What I am resenting now is the attempt by the promoters of this scheme to get this House to understand and get the country to understand that this bill will give free homes to the surplus population of the United States who are looking for free homes, and to whom, if possible, we ought to give free homes.

Mr. MONDELL. Will the gentleman now yield to me?

Mr. RAY of New York. No; I will not. I did not interrupt the gentleman. Do not take my time. Here is your scheme, and here is your proposition: We are to take the proceeds of the public lands in the first instance, and we have about $6,000,000 on hand, and we are to build reservoirs and dig canals out in the great West to carry the waters from the reservoirs to the arid lands, in some places hundreds of miles distant; in some places over the mountains; in some places you are going to take the water into Canada and then bring it in a roundabout course back into the United States to irrigate land in the United States. This is your scheme, and you can not deny it. The settler may then go, if he sees fit, to this arid land and take up 160 acres of desert or arid lands as a home, and by paying the cost of irrigation have irrigated land. Such a scheme, I pause to say, will lead to international complications and contentions the consequences of which no man can foretell.

The settler is to pay the Government a price for the water rights with which to irrigate his arid land, and the Secretary of the Interior fixes that price or cost. It is left optional with the Secretary of the Interior. He is to fix the amount that the settler is to pay. On the Milk River claim he is to pay, it is supposed, $21 an acre——

Mr. MONDELL. Will the gentleman yield to me?

Mr. RAY of New York. I can not.

Mr. MONDELL. The gentleman does not want to make a misstatement?

Mr. RAY of New York. I can not yield, and I do not yield. I trust my friend will understand.

Mr. MONDELL. I did not think my friend wanted a misstatement to go into the RECORD.

Mr. RAY of New York. No misstatement will get into the RECORD. I love the gentleman from Wyoming, would yield if I could, but "time is fleeting"——

Mr. MONDELL. And the gentleman from Wyoming returns his affection. [Laughter.]

Mr. RAY of New York (continuing). And his efforts to get a benefit for his people out of the public Treasury ought to meet with the same approval over the country at large and from the membership of this House that all schemes of that kind meet, and no greater.

Now, what I intended to say is that under the provisions of this bill certain States and two Territories would get large benefits. No doubt about that. That I concede, but it will be at the expense of the people of other States of this Union. It will be at the expense of the taxpayers of the rest of this country.

Mr. SHAFROTH. I thought the gentleman said the settler had to pay it.

Mr. RAY of New York. I did not say any such thing.

Mr. SHAFROTH. Did not the gentleman say that the settler had to pay this?

Mr. RAY of New York. I did not. Can not the gentleman understand what I said? [Laughter.]

Mr. SHAFROTH. I can not comprehend how you can charge that these people will get the benefit of it and yet at the same time they have to pay for it. I can't understand that.

Mr. MONDELL. Will the gentleman yield to me for a question?

Mr. RAY of New York. I will not yield. Now let me repeat once more. You may go and take a piece of desert land free. When you have taken your land, if you desire to have irrigation, to have water, then you are to pay over to the Government such a sum of money as the Secretary of the Interior fixes as a proper compensation for the water right.

Mr. SHAFROTH. It says his "proportion of the total cost of construction;" that is the language of the bill.

Mr. RAY of New York. He pays for this in the beginning. The public lands belong to all the people of the United States, the people in all the States, and you propose to take this money, in the first instance, that belongs to all the people, for the construction of these dams and these reservoirs in order that you may build up and render irrigable and productive these lands in certain States and Territories. Now, whatever comes back from the men who take up these lands is not, under this bill, to come back into the public Treasury and to be used for the benefit of all the people, but that money is to be used in the repair of existing and in the construction and extension of other irrigation works; and it is conceded, I may say, in the Committee on Irrigation, and conceded everywhere, that the public Treasury never will get back the cost of construction.

It is conceded that the money never can come back, because the cost of maintenance or the cost of the extension and repairs will use all. Except, some gentlemen claim, that way in the far-distant future, when the present generation and its descendants, their great-grandchilden, and their great-great-great-grandchildren are all gone, there is a possibility that from the revenues of these water rights, revenues derived from the reservoirs, there may be a surplus that will go back into the public Treasury. But that is so far in the future, such a dim vision, that no one pretends to specify the time within a thousand years when a benefit could accrue to the people of the United States.

Now, there is your scheme in the beginning. My first objection to it is that it is unfair; that it is taking the money of all the people to build up one section of this great country, and that it is wrong in principle, sectional, and unwise.

Mr. MONDELL. Just one question.

Mr. RAY of New York. I can not yield, and please do not use my time in this way. Now, another objection is that it puts too much power, it puts a dangerous power, into the hands of the Secretary of the Interior. He is to make the rules and regulations; he is to control this fund. True, he is to report to Congress what he has done and what he is doing, but what will Congress do? What will Congress know about it? It makes him the arbiter of this whole question substantially unrestrained. Of course Congress could step in at any time and interfere and repeal the law and put the power elsewhere. All that I concede. But I do claim that no such power as this ought to be placed in the hands of the Secretary of the Interior. He will have no time to attend to it. The Secretary could not give attention to all the details, and the result will be that in that Department the management of these irrigation works, their construction, the letting of these contracts—and there is no certain limitation upon the power to make these contracts—will pass into the hands of subordinates in the Interior Department, and I believe that it will lead to possible corruption and to scandals. Here is the Milk River project I have referred to:

THE ST. MARY DIVERSION CANAL.

The Secretary of the Interior recommended for construction the St. Mary Diversion Canal in northern Montana. A Senate committee report gives some particulars of the work in contemplation and is singularly silent on others of first importance.

It is proposed to divert water from the St. Mary River by a canal 44 miles long to the South Fork of Milk River. Part of the water can be carried from the point in the natural channel of Milk River out of the United States, through Canada, and, after many miles, back into the United States again, for the irrigation of the lower Milk River Valley.

The other part would be carried through an extension of the canal 46 miles farther to Cutbank Creek, thence through the natural channel of that creek to the Marias River, whence it would be rediverted, together with Marias River water, through another canal 75 miles long.

The total irrigated area is estimated at 522,000 acres, 402,000 dependent on the Marias River and 120,000 on the St. Mary River. The cost of construction of the St. Mary diversion to Cutbank Creek is estimated at $1,623,000; the works on the lower Milk River basin, which can only be available for St. Mary water, at $900,000, a total of $2,523,000, or $21 per acre irrigated, which is more than twice the average cost of irrigation works in the United States. On the other hand, the Marias works are estimated at $977,000, which, for 402,000 acres, would give a rate of $2.43 per acre.

The St. Mary diversion canal involves some stupendous work, and on the showing made may well be considered impracticable from both commercial and an engineering standpoint.

The water of the St. Mary River can not be used in its own drainage in the United States. The Canadians have already developed irrigation works on the stream, and the United States now proposes to divert the water to the injury of the Canadian irrigator. The Senate committee report makes no mention of this international tangle, but seems to gloat over the fact that the Canadians can not redivert the water as it is transported through the Milk River in their territory.

The diversion of water from the St. Mary River is the smallest, the most expensive, and the only complicated part of the enterprise recommended by the Secretary, yet it is marked out as the point of first attack. We wonder why?

STORAGE AND DIVERSION OF THE WATERS OF ST. MARY LAKES, MONTANA.

The St. Mary project is designed to store flood waters in the St. Mary Lakes in Northern Montana and conduct these easterly by a canal cut through the ridges at the head of Milk River. These lakes receive the drainage from the high peaks of the Rocky Mountains, but, instead of continuing easterly across the plains, as do the rivers further south, the waters overflow northerly by St. Mary River to the Saskatchewan River and are lost in Hudsons Bay. The easterly course, which appears to be the original or natural direction for the waters to pursue, has been blocked by the glacial debris left near the foot of the mountains. In this low, irregular country are a number of small streams, most of which are tributary to Milk River. The proposed canal will restore what may be called the original preglacial drainage and allow the waters from the Rocky Mountains to continue eastward down the slope of the country.

Milk River, heading in the low, rolling country east of the foot of the mountains, has a general northeasterly direction, the two principal branches, North Fork and South Fork, uniting after crossing the Canadian line. The stream thus formed flows easterly for 150 miles or more, where it bends to the southward and again returns to Montana, finally emptying into the Missouri River. The broad Milk River Valley in Montana consists of a generally rolling country, adapted to irrigation. The water supply from the river is, however, deficient, owing to the lack of high mountain area at the head waters. The diversion canal, as planned, will restore the mountain catchment area to this stream.

It is proposed to build a low storage dam at a point about three-fourths of a mile below the present outlet of lower St. Mary Lake. This dam will have a maximum elevation of 50 feet above the bottom of the river and will form a reservoir of a capacity of 250,000 acre-feet. This reservoir will serve to hold the flood waters and the supply received from the melting snow in the mountains. The head of the diversion canal will be on the right hand or eastern side of the dam. It will continue down along the right bank of the river for about 7 miles, then turn easterly through a low gap.

The water of the St. Mary River is not used in the United States, but in Canadian territory, 7 miles north of the international line, is a canal completed in 1900. Between the site of the proposed dam at the foot of St. Mary Lake and the head of the Canadian canal a considerable number of large streams discharge into St. Mary River, furnishing an ample supply for the land irrigated in Canada. It is not believed that any international complication can arise concerning water rights, since the water which it is proposed to store and divert occurs wholly within Montana, and it would be impossible for the Canadians to store and utilize this flood water, even if needed in their canal.

The length of the proposed St. Mary Canal, from its head on St. Mary River to the North Fork of Milk River, is 27.4 miles, and the cost of construction, including dam and head gates and the drop at the North Fork, will be $687,000.

ESTIMATED COST OF ST. MARY DAM AND CANAL TO NORTH FORK OF MILK RIVER.

Dam	$22,000
Tunnel at head	12,000
Head gates	10,000
Head to Spider Lake excavation	245,100
Spider Lake to drop, North Fork excavation	288,400
Drop, North Fork	16,040
Two sets of waste gates on line	4,000
	597,540
Engineering and contingencies	89,460
Total	687,000

The canal has been planned to carry 1,200 cubic feet per second, and the amount of acreage to be reclaimed is estimated at 120,000 acres of public land, which would have a probable value of $35 per acre, or $4,200,000, and would sustain a population of 20,000. By storage in the lower Milk River Valley the area of reclaimed land, including the use of Milk River, can be increased to 300,000 acres.

The extension of the canal from North Fork to South Fork and turning it into this latter stream will have certain advantages over the plan for stopping the canal at the North Fork. The total cost of the canal, from the head to the South Fork of Milk River, will be $1,173,000, and its length will be 43.8 miles.

ESTIMATED COST OF ST. MARY DAM AND CANAL TO SOUTH FORK OF MILK RIVER.

Dam	$22,000
Tunnel	12,000
Head gates	10,000
Head to Spider Lake	245,100
Spider Lake to North Fork of Milk River	288,400
Two sets of waste gates	4,000
Siphon, North Fork	67,000
North Fork to South Fork Milk River	360,800
	1,009,300
Contingencies	109,000
Engineering	54,700
Total	1,173,000

If the water is turned into either the North or the South Fork of Milk River, it first finds its way into Canada before it can be used in the lower basin. The valley proper of Milk River in Canada is comparatively narrow and has little irrigable land, so that any proposition on a large scale must contemplate using the high bench of lands above.

Milk River in Canada, from the junction of the North and South Forks downstream, has a very slight fall—not more than 2 feet to the mile—and a canal of 100 miles or more in length would be necessary before the water could be brought to the upper benches. It is not, therefore, considered feasible to divert the waters from Milk River in Canada. In case this should ever be attempted it is entirely practicable to keep the water in American territory by an extension of the canal from the South Fork to the Marias River. The canal from the South Fork could be carried around the ridge between the basin of this stream and that of the Marias drainage, and after running for a distance of about 46 miles from South Fork it could be turned into Cutbank Creek. The cost of construction from the head to this point will approximate $1,623,000, and the distance will be 90 miles. The canal has not yet been located from the South Fork to Cutbank Creek, and the latter figure of cost is a rough estimate.

The water could then be allowed to continue down the natural channel of this stream and the Marias for 100 miles or more, when it would be diverted from the latter near the mouth of Willow Creek, and in the course of about 75 miles turned into Big Sandy Creek, a tributary of Lower Milk River. This plan keeps the canal in the United States territory for its entire course until it reaches Lower Milk River, where the water can be most advantageously used. The total cost, from the head on St. Mary River to Big Sandy Creek, by the Marias diversion, is placed at $2,600,000. This location has not been surveyed, however, and the above estimate, together with those that follow, are simply roughly approximate.

Plans have also been considered for a secondary system of storage reservoirs in the Lower Milk River basin.

If this plan is adopted of turning the water of St. Mary Lake into the South Fork of Milk River, allowiug it to continue down through Canada, and then utilizing it through the secondary storage system in Lower Milk River Valley 300,000 acres can be reclaimed at an estimated cost of from $7 to $9 per acre.

In the complete development of the system, including the utilization of St. Marys and Marias waters and the construction of the secondary storage systems, about 500,000 acres can be reclaimed at a cost not to exceed $10 per acre.

Three public documents have been issued, in which reference has been made to the St. Marys canal project in Montana. They are—

(*a*) Hearings before the Committee on the Public Lands, House of Representatives, January 11-30, 1901.

(*b*) Report No. 254 of the Senate Committee on the Reclamation of Arid Lands, 1902.

(*c*) A condensed statement taken from the report on the St. Marys canal project.

The last has recently been given publicity, and is, in many respects, a remarkable document. Its opening paragraph indicates that it is the intention not only to "commit the Government," as Mr. Maxwell puts it, to the construction of an irrigation canal in Montana, but to complete the work of nature in accordance with the ideas of the Geological Survey—"To restore what may be called the original pre-Glacial drainage and allow the waters from the Rocky Mountains to continue eastward down the slope of the country."

There is no occasion to be surprised at the bold proposition; the only wonder is that, having found fault with nature for disturbing the course of the waters of the St. Marys River, it is not also proposed to twist the Rocky Mountains a little farther round so that the waters of the Belly River and other minor streams that rise in the United States and flow north into Canada may also enjoy the privilege of continuing easterly across the plains as do the rivers farther south—south of that imaginary line termed the "international boundary."

The third paragraph gives some details of the work of storage proposed, as distinct from that of diversion, following upon the opening words: "The St. Mary project is designed to store flood waters in the St. Mary lakes." This is evidently a new feature of the scheme, as in 1901 Mr. Maxwell stated before the Committee on the Public Lands (see p. 51): "In northern Montana the principal project is not a water-storage plant." The dam is stated to have a maximum elevation of 50 feet above the bed of the river. Farther on the cost of this structure is stated at $22,000, which strikes the ordinary mind as a remarkably low figure for any character of structure of the dimensions quoted in the locality in question.

The fourth paragraph contains the first public admission that the Canadians use the waters of the St. Mary River for irrigation purposes. Has there been any reason for this peculiar silence in the past? It is stated that "between the sites of the proposed dam at the foot of the St. Mary Lake and the head of the Canadian canal a considerable number of streams discharge into St. Mary River, furnishing an ample supply for the land irrigated in Canada." Is it likely that the United States is in possession of information as to the supply needed by Canada, the land now irrigated or that can be irrigated from the St. Mary River? Particular attention is called to the next sentence: "It is not believed that any international complication can arise concerning water rights, since the water which it is proposed to store and divert occurs wholly within Montana, and it would be impossible for the Canadians to store and utilize this flood water even if needed in their canal."

The waters of the Rio Grande River north of the Mexican boundary occur wholly within Colorado and New Mexico, yet so apprehensive is the United States of international complication arising with Mexico that injunctions have been maintained for some years against private corporations in New Mexico proposing to store and utilize the flood waters of the Rio Grande. The assertion that "it would be impossible for the Canadians to store and utilize the flood waters" is not supported by the submission of details, and it is probably as unfounded as the following statements regarding the character of Milk River in Canada: "Milk River in Canada, from the junction of the North and South Forks downstream, has a very slight fall, not more than 2 feet to the mile, and a canal of 100 miles or more in length would be necessary before the water could be brought to the upper benches." The fall of Milk River in Canada at the point referred to and for some distance downstream is at least three times that stated, and water can be applied to land for irrigation purposes within one-fifth of the distance stated, if not to "the upper benches," certainly to an area capable of absorbing all the water proposed to be diverted by this work.

The alternative proposition of carrying the water to the South Fork of the Milk River and thence to the Marias River, and thence through 100 miles of that stream, and thence by a canal 75 miles long to Big Sandy Creek, and thence, and so forth and so on, to the Milk River Valley, is, of course, still open. Leaving out of consideration the length of Big Sandy Creek through which it is proposed to carry the water to Milk River and the distance in Milk River itself before the lands to be irrigated are reached (neither of which lengths are stated), the water will have traveled 265 miles between the point of diversion and the point of initial application to irrigation uses.

There is no parallel to effective transportation of water for use in irrigation in any works over such a distance before use within the United States nor, one might boldly venture to assert, anywhere else. It is not to be suggested in that connection that simply because that has not been done before it can not be done at all, but it can be set up with assurance, supported by the results of the investigations of the United States Department of Agriculture and the experiment station of the Agricultural College of Colorado, to quote no other sources, that at the end of such mileage a net duty of 100 acres per cubic foot per second will not be obtained. That assertion will be so conclusive to even the merest tyro in irrigation as to need little evidential support. It will always be a marvel that such a contention could possibly be made.

By this route, the report goes on to say, "the total cost from the head on St. Mary River to Big Sandy Creek, by the Marias diversion, is placed at $2,600,000." That does not include the additional sum of $300,000 estimated for "the cost of secondary system of reservoir sites with their supply canals to the Lower Milk River basin?" This cost of $2,600,000 would be applied to the irrigation of 120,000 acres of land, a rate of $21.66 per acre. There are sundry references to the ultimate expansion to 200,000 acres at a "cost of from $7 to $9 per acre," and to 500,000 acres at a cost not to exceed $10 per acre. There is, however, absolutely no reference anywhere to the source of the additional water supply to care for the additional territory. The provision of 250,000 acre-feet at St. Marys Lake is one item only; there can be no more than the acreage due to 1,200 cubic feet irrigated until the connecting canal is enlarged to the capacity needed for the greater area.

Nowhere is provision made for the cost of such enlargement, and if it costs $2,600,000 for the construction to the initial capacity of 1,200 cubic feet per second, there would probably be a proportional cost to 3,000 cubic feet and 5,000 cubic feet. This rate of $21.66 must be considered a high one, even if the area reclaimed is to be estimated at the value of $35 per acre, which, it will be immediately apparent, no settler will be ready to pay to the United States Government for a homestead. The United States census of 1890 gives the average cost of irrigation at $8.15 per acre. On this point reference may again be made to the evidence of Mr. Newell, before the Committee on the Public Lands, House of Representatives, 1901, page 53. In answer to a question by Mr. SHAFROTH, as to the "estimate of cost of such work per acre of reclaimed land," Mr. Newell replied:

"The cost of providing the more accessible reclamation works would at first probably not exceed $5 per acre reclaimed."

It is quite evident, therefore, that the St. Marys project can not be regarded as one of the "more accessible reclamation works."

On page 51, Hearings before the Committee on the Public Lands, House of Representatives, Mr. Newell is quoted as saying:

"By a comparatively short canal, one which does not offer any great engineering difficulties, the headwaters can be taken out and turned into Milk River. * * * The estimates made thus far only include the first 9 miles of the canal. We have not yet been able to complete estimate for the remaining 7 miles."

The changes have been rung on the phrases, "no great engineering difficulties," "no considerable engineering obstacles," etc., while the facts would point to either a false suggestion or a modest effort to minimize the engineering ability that will overcome the obstacles in the event of the construction of this canal.

What are the facts?

Mr. Newell states the length of the canal, in the survey of 1900, as 16 miles from St. Mary Lakes to the North Fork of Milk River, the estimates for 9 miles of which only had been completed. The remaining 7 miles were "roughly approximated." In Report No. 254 of the Senate Committee on the Reclamation of Arid Lands that distance is stated at 27.4 miles. How is the difference accounted for? In the survey of 1900, is it not a fact that the 2 miles preceding the entrance to North Fork of Milk River developed a depth of cutting averaging 90 feet in depth, in itself a work of no inconsiderable engineering difficulty, which the survey of 1901 evidently proposes to avoid by a detour in location, increasing the length of canal from 16 to 27.4 miles, even then involving cutting over 30 feet in depth?

In the survey of 1900 it was proposed to bridge the North Fork of Milk River, in the event of adopting the all-American route, by a flume over 2,000 feet long and 150 feet maximum height, "no inconsiderable engineering difficulty." Not much publicity has been given to the fact; it is not even included in the "condensed statement taken from the report on the St. Mary Canal project," but the survey of 1901 proposes to avoid this flume by the construction of an inverted siphon 2,000 feet long, with an arch of 171 feet, to carry 1,200 cubic feet of water per second. "No inconsiderable engineering difficulty," yet the record of irrigation construction not only in the United States but in the world can be searched to find the parallel of such a structure. Not only will the engineer who designs a structure to successfully fulfill the conditions required be entitled to high rank among his fellows, but he who will complete it for the modest sum of $67,000 must be given preeminence among brilliant constructing engineers.

On the estimates submitted criticisms can not be offered, lacking details; the two items of $22,000 for a dam of 50 feet maximum height and $67,000 for an inverted siphon of 171 feet arch scarcely give evidence of reasonable approximation.

Mr. MONDELL. Mr. Speaker——

Mr. RAY of New York. I beg the gentleman's pardon; I did not intend to disturb him so much. I did not intend to make him so uneasy. I am sorry for it. I apologize.

Mr. MONDELL. I am not uneasy; but I do not want the gentleman to go on making misstatements as to the provisions of the bill.

Mr. RAY of New York. I am stating the truth, substantially.

Mr. MONDELL. The gentleman said that the bill contained no limitation upon the power of the Secretary of the Interior to let contracts.

Mr. RAY of New York. I did not say that unqualifiedly.

Mr. MONDELL. I beg the gentleman's pardon; I understood him to say so.

Mr. RAY of New York. I said that in reality there were none. The bill purports to say that contracts shall be let when there is money in the Treasury in the reclamation fund for the purpose. But it does not expressly limit the power of the Secretary of the Interior in letting contracts to limit the cost to the amount of the money that is in the reclamation fund. It does not say that the amount of money required for the completion of these contracts shall not exceed the amount of money in the reclamation fund at the time the contract is made. And that brings me to my second objection, which is this: We give the Secretary of the Interior full authority to make these contracts; he may, under the provisions of the bill, make a contract the completion

of which will cost a million dollars or five million dollars, when there are only $5,000 in the reclamation fund applicable to the particular work.

Mr. MONDELL. Now the gentleman does not want to have that statement go on record, I hope.

Mr. RAY of New York. That is exactly what this bill will permit.

Mr. MONDELL. Well, I differ with the gentleman, but of course I do not want to take up his time.

Mr. RAY of New York. That is the plain construction. The careful lawyer in looking over the bill can come to no other conclusion.

Now, what will be the effect of that on the Public Treasury? Here is your Milk River scheme, which is going to cost us $21 an acre—$4,000,000 to $6,000,000 to provide the canals and the reservoir to irrigate those lands—there are $6,000,000 in the Treasury; it will take all that money to simply construct the reservoir and to construct those canals and ditches, and to take the water to those lands.

Other sections of the country will be clamoring for a reservoir and a canal; and the Secretary of the Interior, with $6,000,000 on hand, will start in to construct at least three or four different reservoirs, with canals, in different sections of the States named. If he does not do it—if he should not do it, provided this bill becomes a law—he will have such a clamor about his ears that he must resign. The Administration—I do not care whether Republican or Democratic—will have such a clamor from the West that it can not resist. Therefore, to please Nevada, the Secretary will start a reservoir on the eastern slope of California; to please Wyoming there would be established a reservoir somewhere up in the Rocky Mountains; to please Arizona there would be a reservoir established down in that section, and to please Colorado, a reservoir somewhere in that section.

It would not be a year before the Secretary of the Interior would be out of money, because there is only $6,000,000 in the Treasury; and how are you going to get more? Why, sir, this bill provides that the Secretary of the Interior is to withdraw from public sale and public entry all these lands that are irrigable. He may withdraw all the public lands if he sees fit. Therefore the sale of the land is to stop until irrigation reservoirs are completed, canals built, works put in, the land sold, and money begins to come back under the scheme. And that would necessarily be years hence. The result would be that under this bill within two years the Secretary would be without money. We would have reservoirs and canals, two or three or four, more or less, in process of construction in different points in these States. Being without money to complete them—without money to make them useful or protect them, without money to carry out the purposes of the bill—what follows?

Senators and Representatives interested in this scheme will come knocking at the doors of Congress, saying, "You have expended millions to inaugurate this scheme; you have undertaken this work; you have put thousands of dollars into these reservoirs—a million into that one, five hundred thousand into this one, and they are going to ruin, and the Government will lose all that it has invested unless you take hold of the matter now and out of the public Treasury appropriate money to completethis work."

That will be the cry; that will be the claim; and you know what the result will be. You inaugurate in this bill a scheme which within five years will bring Senators and Representatives of all these States named in this bill clamoring in the halls of Congress—lobbying about this Capitol—for an appropriation of money for the purpose of completing these works; and then we will say, "Why, to save this public property we must appropriate money out of the public Treasury."

Mr. SHAFROTH. Does not the gentleman recognize the provision of the bill that the necessary funds for any given work must be available in the reclamation fund, and the Secretary of the Interior can not let any contract without that?

Mr. RAY of New York. Why, Mr. Chairman, if I had been undertaking to rob the Treasury deliberately, I would have drawn the bill in just this way. I would get the Congress committed to it under fair promises and with fair provisions in the bill. I would induce the Government to start a reservoir here, and another there, and another yonder, and would say that with the money derived from the sale of these public lands and deposited in the Treasury this work should go on and be completed. And when the Government is committed to it, then I repeat the cry will come, "There is no money in the Treasury from land sales to complete the work and we must change the law. The land has been withdrawn from sale; no land is being sold; you must not let this work which has been inaugurated, which is in process of construction, go to rack and ruin. In order to save it you must take money out of the public Treasury; you must tax the whole people to save the work that you have commenced."

Now, I have repeated the idea, and I trust gentlemen can comprehend it.

Mr. REEDER. Mr. Chairman, may I ask the gentleman a question?

The CHAIRMAN. Does the gentleman yield?

Mr. RAY of New York. Yes.

Mr. REEDER. Does the gentleman mean to say that when we provide in this bill that no construction can be authorized unless the money is in the Treasury that that money will not be in the Treasury when the work is constructed?

Mr. RAY of New York. It does not say——

Mr. REEDER. It does exactly say so.

Mr. RAY of New York. The bill does not say that there must be money in this fund——

Mr. REEDER. You will find it on page 5.

Mr. RAY of New York. That there must be money in this fund sufficient to carry to completion, to put in operation, each one of the irrigation schemes commenced under it.

Mr. THAYER. Can you not leave it to the Secretary of the Treasury?

Mr. RAY of New York, That is the trouble with your bill. Certainly you can leave it to him, and when he has inaugurated these schemes and commenced the expenditure, and he has run out of money derived from public-land sales and the work is only one-quarter or one-half or two-thirds completed and useless, then you can come, as you will in my opinion, clamoring to Congress for an appropriation out of the Treasury to carry this scheme to completion. There is the trouble with the bill, with the whole scheme, there is the danger of it in the first instance. Now, another thing. Who will get the benefit? Does this bill confine the lands to be irrigated by these works to lands taken up by settlers, those who come hereafter upon the public lands in the great West for the purpose of making their homes upon what is now the public domain? Not at all.

The Secretary of the Interior is not restricted in disposing of water rights to selling them to settlers who come upon those lands. A man who purchases of one of these railroad companies—a man who owns land there now—may purchase of the Government a water right. True, the amount of the water right he may obtain is limited, but still he may get it; and so we find behind this scheme, egging it on, encouraging it, the great railroad interests of the West, who own millions of acres of these arid lands, now useless, and the very moment that we, at the public expense, establish or construct these irrigation works and reservoir, you will find multiplied by 10, and in some instances by 20, the value of now worthless land owned by those railroad companies, the title to which they obtained through grants from the Government for building great transcontinental railroad lines. Therefore I can not account for the favor this bill receives in some quarters. Again, it is unfair——

Mr. SHAFROTH. Will the gentleman allow me right there?

Mr. RAY of New York. I will not, with all due deference, and begging the gentleman's pardon, for I have not the time. It is unfair to the farmers of the East, unfair to the farmers of New England, New York, Pennsylvania, Ohio, and other States I might name for the Congress of the United States to take their money, money which belongs to them in common with other citizens of other States, unjust to take that money for the construction of these reservoirs and the promotion of these schemes, which can only in their result build up the particular States and Territories where the works are located and where the canals run.

Mr. HOPKINS. Will the gentleman from New York allow me right there?

Mr. RAY of New York. In a moment. [It will at the public expense build up competition in the great West with which the farmers in the East must contend, and no one will claim for a moment, because they can not justly make the contention, that there is to-day any deficiency of farming lands in the United States. We have broad acres enough; a chance to put to work all who will work.] If there is a surplus anywhere to-day of people who desire to go upon the farm let them come into New York and we can give them a fair chance to purchase a home, a fair chance to till the soil.

Mr. THAYER arose.

Mr. RAY of New York. No; I promised to yield to the gentleman from Illinois. Now, what is the question?

Mr. HOPKINS. I was going to suggest to the gentleman from New York that we have appropriated millions of dollars for the harbor of New York City. Now, that benefits the city of New York as against Boston, as against Charleston, S. C., and other points, and yet the gentleman has voted for that appropriation, has he not?

Mr. RAY of New York. Do you draw any sort of comparison between a scheme to promote interstate and foreign commerce especially, and a scheme to irrigate desert lands within a State of this Union?

Mr. SHAFROTH. The President says they are identical in principle.

Mr. RAY of New York. I have not asked you any sort of a question, my friend. [Laughter.]

Mr. HOPKINS. I desire to say to the gentleman from New York that the same line of argument that is used——

Mr. RAY of New York. Now, I have asked you a question. Answer it. Do you say that there is a parallel——

Mr. HOPKINS. Oh, yes.

Mr. RAY of New York. You do?

Mr. HOPKINS. Yes; and I can show the gentleman——

Mr. RAY of New York. Then I will come to that.

Mr. HOPKINS. I will show the gentleman the parallel right now if he will allow me to make it.

Mr. RAY of New York. I was coming to it, and I will come to it right now. I trust that when my friend gets to be a Senator, as I hope he will, he will again study the Constitution of the United States. Evidently he has been so engaged with his political canvass that he has allowed some of the provisions of that instrument to pass out of his mind. I know that he has read it in the past and that he will read it again in the future. When he does so he will find what he has temporarily forgotten, that the Constitution of the United States gives to the Congress of the United States full and complete power over the subject of interstate and foreign commerce, and under that clause of the Constitution we have the right—we have always exercised it, we always will, and we always ought to exercise it—to promote commerce between the United States and foreign countries by improving and keeping open our rivers and harbors. But the irrigation of our public lands for sale to private owners neither promotes the general welfare of the United States nor protects nor promotes interstate or foreign commerce in the constitutional sense.

Mr. SHAFROTH. Will the gentleman——

Mr. RAY of New York. Oh, why do you so constantly disturb me?

Mr. SHAFROTH. I just want to read the provision of the Constitution to which you refer, to show you that it does not bear the interpretation you put upon it.

Mr. RAY of New York. Do not show how disturbed you are. Please be quiet.

Mr. SHAFROTH. Well, I should like to have you yield when you are discussing the question.

Mr. RAY of New York. I must not give away all of my time. It is limited.

Mr. SHAFROTH. But here is the constitutional provision.

Mr. RAY of New York. Under the provision relating to interstate and foreign commerce we improve the harbor at Chicago, we improve the harbor at Duluth, we improve the harbor at Charleston, at Boston, Philadelphia, and hundreds of other points.

Mr. SNODGRASS. Mr. Chairman, we are very much interested in this question, and we should like to hear what the gentleman is saying.

Mr. RAY of New York. I think if every gentleman will listen to what I am saying, there will be no difficulty in my being heard. And I wish to say to you that it will pay you to listen. I have studied this subject carefully, and I have some information to give you. It is correct information. I will cite you some authorities, and if you will study them you will see that you can not constitutionally support this measure, and that it can not be executed, if it is written upon the statute book, never.

Through the ports of New York, Boston, Charleston, Philadelphia, and New Orleans, maintained and kept open largely at the public expense, we take the pork from Illinois and the other States, we take the wheat and corn that grow upon the broad prairies of the great West and carry them out upon and over the ocean and to foreign markets. Were this not done you of the West could not reach the European markets. We do it under special authority of the Constitution. I will not enlarge upon that idea, but where do you find warrant in the Constitution of the United States——

Mr. MANN. Will the gentleman yield for a question?

Mr. RAY of New York. Certainly.

Mr. MANN. Does the gentleman contend that the power to improve rivers and harbors is derived from the power in the Constitution to regulate interstate and foreign commerce?

Mr. RAY of New York. Why, of course you could exercise under the general-welfare clause if you desired or preferred to do so.

Mr. MANN. I always supposed it was under the general-welfare clause.

Mr. RAY of New York. There has been a great deal of contention among constitutional lawyers as to whether it comes under the general-welfare clause or under the other I have mentioned.

Mr. MANN. I wish simply to get the opinion of the gentleman, because he has studied the subject and is well informed.

Mr. RAY of New York. Well, I will say, as the Supreme Court have said, and I can cite you to a dozen cases, that if it is not justified under the one clause of the Constitution—that is, the general-welfare clause—it is justified under the other. If it is not justified under the one it is under the other, taking the two together. You will find that judges and lawyers differ about it, but to-day it is conceded by everyone that the constitutional power exists.

Mr. HOPKINS. I suppose my friend will concede——

Mr. RAY of New York. Do not use up all my time, please. You simply seek to divert me from my argument.

Mr. HOPKINS. I beg your pardon.

Mr. RAY of New York. There are none so blind as those who will not see and do not desire to see.

Mr. HOPKINS. That is what I have been thinking for a long time.

Mr. RAY of New York. Now let me proceed. I say we have no constitutional power or right to enact this bill. I will print some of the authorities, because I have not time to read them now.

Mr. Chairman, how much time have I occupied?

The CHAIRMAN. The gentleman from New York has occupied the floor thirty minutes.

Mr. RAY of New York. I can only use a few more minutes. In a case to which I will invite attention, Missouri *v.* Illinois and the sanitary district of Chicago—is the gentleman familiar with that case?

Mr. HOPKINS. I think I know it quite as well as my friend.

Mr. RAY of New York. Do not compare your knowledge. I simply inquired if you know of the case.

Mr. HOPKINS. I have read it.

Mr. RAY of New York. I concede that the gentleman from Illinois for legal knowledge, for acumen, for general intelligence, for health, for beauty, far exceeds the "gentleman from New York." [Laughter and applause.]

Mr. HOPKINS (rising). I thank you.

Mr. RAY of New York (continuing). I concede all that. I asked him, "Are you familiar with that case?" The principle enunciated is what I call your attention to, and to dozens of other cases. I ask gentlemen who read the minority views, which I had the pleasure to prepare—of course I could not prepare minority views such as would have been prepared by the gentleman from Illinois if he had been on my side of the question and on the committee, but I did just as well as I could to read that case. I took every case in the books on condemnation by the General Government, and on page 8 of the minority views you will find the cases, leading cases, where the Government of the United States has exercised the power of eminent domain.

Now, I call your attention to our constitutional power in regard to our public lands—and our fathers when they wrote that instrument wrote wisely. They knew what they were doing; they knew what they intended to do. They were opposed to the feudal system. They were opposed to having large tracts of land owned by a few people in this country, opposed to having the ownership of land in the hands of few persons, as was the case in England. They wanted the land to be held by the people. They knew we owned a vast tract of land beyond the Ohio River; that it belonged to the people of this nation. They undoubtedly foresaw that not far in the future we would own other lands, as we have. They knew that we were a sovereign nation. They knew that we had all the powers of a sovereign nation. They knew we could do what we wished with our own. They knew that as a sovereign power we could sell or rent our public lands; that we could improve our public lands, and that we could build upon those lands homes and fences, houses and barns; as a sovereign power that we could rent them to our citizens for farming and other purposes.

They knew all that, and look to the debates of Congress and look to the debates of our fathers when they framed the Constitution and you will find that what I say is true—they opposed the ownership of all the land by a few persons. Now, what did they do? Did they say we could do anything with our public lands we saw fit? Not at all, but in defining the power of Congress over these public lands they restricted our power. Here is what they said: "The Congress shall have the power to dispose of and make all needful rules and regulations respecting territory or other property." "Shall have the power to dispose of." Why limit it to disposition? There is no lawyer on this floor who does not know that if I give you power of attorney to dispose of my land you have the power to sell; that you have no power to rent and no power to improve it in any respect. When our fathers wrote those words "dispose of" they put them in because the words were restrictive of the powers we otherwise should have possessed.

Mr. FINLEY. Will the gentleman permit me to ask him a question?

Mr. RAY of New York. Just for a moment.

Mr. FINLEY. Does the gentleman admit the power to tax?

Mr. RAY of New York. Tax what?
Mr. FINLEY. In the Territories.
Mr. RAY of New York. Tax the public lands?
Mr. FINLEY. Tax anything.
Mr. RAY of New York. It never has been considered whether the Congress of the United States can tax public lands of the United States or not.
Mr. FINLEY. Not the public lands, but everything.
Mr. RAY of New York. I think it would be ridiculous to entertain such an idea.
Mr. FINLEY. Imports and other things.
Mr. RAY of New York. I can not yield further; I am not to be diverted from my argument by questions such as that.
Mr. FINLEY. I heard your argument here a year ago.
Mr. RAY of New York. I am not yielding for a speech now. Please do not interrupt.
Mr. FINLEY. Well.
Mr. RAY of New York. I can not yield for that purpose. Our fathers put that in as a restriction. But now let us come to another proposition, which immediately follows that. We never have exercised any further or greater power than that. Gentlemen on the committee, colleagues of mine for whom I have the highest regard and respect, have said, "Why, we survey our public lands." True. The power to survey is incidental to the power to dispose of. The power to survey must be exercised in order that we may intelligently dispose of our public lands. Will any gentleman here claim for an instant that we have the right, that the Congress of the United States has the right or the constitutional power to authorize some person, at the public expense, to go upon the public lands and take off the stones, where they are stony; plow them; fertilize them, where they need fertilization; build fences; build barns; build houses; lay them out in farms, and then rent them to A, B, or C; rent them to those who desire to come from the Eastern States and have a home at a cheap rental? Does any gentleman contend that?
Mr. SHAFROTH. Do you want an answer?
Mr. RAY of New York (continuing). There is no one but knows in his heart and good judgment that we have no such power as that. And our fathers when they framed and adopted the Constitution knowingly put those words "disposed of" in there, and so limited the power of Congress. They put them there to prevent the United States of America from ever reverting to the feudal system which prevailed in England, Germany, and in the old countries from which they fled. Read the history of the United States. Read the history of the American people and you will see that what I say is correct.
Mr. LITTLEFIELD. Will the gentleman allow me a question?
Mr. RAY of New York. Yes; if it is only a question, and a short one.
Mr. LITTLEFIELD. It is very short. Can the gentleman find anything in the Madison debates that indicates that the fathers gave any such meaning to this clause as the gentleman now suggests? I have read them with great care on another proposition, but I do not recollect of seeing it.
Mr. RAY of New York. It was discussed when the Constitution was framed. The question was discussed, and I can point you to three or four different books where the question was discussed and the purpose of it. It is referred to by Professor Fiske.
Mr. LITTLEFIELD. But he was not one of the fathers.
Mr. HOPKINS. And not a very good constitutional lawyer, either.
Mr. RAY of New York. No; he was not one of the fathers, but he was one of the writers. He wrote ably and intelligently about the fathers and about the history of New England and the United States, and he gives us a great deal of information on the subject, and he refers us to authorities which are useful. We are now coming to the other provisions of the bill. In order to irrigate in Nevada they must condemn lands and water in California. The gentleman from that great State of 38,000 people, about one-fifth as many people as I have in my congressional district, says that in a few years if they can not have irrigation and they lose the irrigation they have now Nevada will dry up.
Mr. LITTLEFIELD. Will the gentleman permit me a question?
Mr. RAY of New York. I can not keep yielding in this way.
Mr. LITTLEFIELD. I simply wanted to ask the gentleman this question. I would like to hear him on the question whether or not this bill involves a public use.
Mr. RAY of New York. I am coming to that, but here are gentlemen every little while asking me questions and trying to divert me. I will come to that question as rapidly as I can. The gentleman from Nevada says in effect, not words, that Nevada, or a large portion of it, can, at the public expense, be made to blossom like the rose if the Eastern taxpayers are willing to pay for the improvement and give up their share of the public moneys derived from the sale of public lands. "Well," we say, "is there water in Nevada? Is there water there that you can apply to the irrigation of the arid land?" "No." "Where will you get the water?" "We propose to go into the State of California, on the eastern slope of her mountains, and there, if they will not give or sell it to us, we propose to condemn the right to take the head waters of those streams, conduct that water into the State of Nevada to use for irrigation purposes. If need be, we will take it against the will of the State of California and then distribute it over the arid lands of Nevada for the purposes of irrigation."
Gentlemen who favor this bill propose that the Government shall go up into the foot hills of the Rocky Mountains for a supply of water, and if the State will not surrender the right to the Government to store and dam up these head waters of the streams, they propose to go into the State courts and condemn these water rights for the purpose of irrigation; not in the State where they propose to irrigate, but in Colorado they propose to condemn lands and water rights to irrigate arid lands in Nebraska or Kansas, or it may be in some States farther north. They are going to take and condemn water and water rights in one State, store the water for purposes of irrigation in some other State, or in two or three States. What does the proposition lead to? It leads to this question: Has the General Government of the United States power, in the exercise of its sovereign rights, to go into a State and condemn water or water rights, store that water, and then conduct that water where they please for the purpose of irrigating arid lands belonging to the Government for purposes of sale to private owners?
If we have that power, then the General Government has the power to go into every State of this Union, to go to the headwaters of the Mohawk River, to the headwaters of the Hudson River and store those waters, divert them into Lake Ontario, divert them into a canal that shall flow across the State of Massachusetts and empty into Boston Harbor. If they have that right, they may take the headwaters of the Ohio River, divert those waters into some stream that shall empty into the Potomac River or the Chesapeake Bay. You may say to me, gentlemen, if you please, that such a scheme is impracticable. That I might concede, but that is not the question; it is a question of power, and I say that constitutionally, in my judgment, it can not be done. Now, let me tell you why.
Mr. MONDELL. Will the gentleman allow me?
Mr. RAY of New York. No; I can not yield.
Mr. MONDELL. But the gentleman has got a bogy man that is not in the bill.
Mr. RAY of New York. I have got no bogy man.
Mr. MONDELL. Whereabouts does the gentleman find any such provision as he is arguing? Whereabouts in the bill is there anything that attempts to give the Federal Government any right to condemn or to take any water right or do anything which an individual could not do? Will the gentleman point out any place or any provision for the Federal Government to do anything that I could not do if I owned the public land?
Mr. RAY of New York. Do you say there is nothing in this bill that provides for condemnation?
Mr. MONDELL. The bill provides explicitly that even an appropriation of water can not be made except under State law.
Mr. RAY of New York. Let me see. There is one great trouble with the bill——
Mr. MONDELL. The gentleman having argued the other side of the question, would now take the opposite ground.
Mr. RAY of New York. I do no such a thing.
Mr. MONDELL. The gentleman must adopt one or the other view; he can not adopt both.
Mr. RAY of New York. Now, when the gentleman gets into a condition of rest I will read the bill.
But I must not forget to state to the House one other provision of this bill which I had passed over in my haste, and that is that wherever the water does not fall out of the heavens and they do not find it anywhere on the surface of the earth they are going to sink artesian wells. So that they are going to construct reservoirs and then sink artesian wells and pump water out of the earth and store it therein at the public expense. Why, sir, up in New York and Pennsylvania and New England we have to dig our own artesian wells. And that is one ground of complaint that I have against this bill—that it does not propose at the public expense to sink any artesian wells for Pennsylvania and New York and New England farmers. Now, let me read section 7 of the bill:

That where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose.

This is the unconstitutional provision to which I refer. It can not be enforced. I refer to my report, which I will print as a part of my remarks, as it contains all the authorities.
And still the gentleman who reported this bill and who has made an hour's speech in favor of it, says there is not anything

of that kind in the bill. I do not blame him for being confused. In the Fifty-fifth Congress they introduced a bill of this character. I was on the committee, and I prepared a report against it. In the Fifty-seventh Congress they introduced another bill, and I condemned it; and then they undertook to improve it, and introduced another bill. I condemned that also. And then the Senate bill came over here and they changed that. I do not wonder at the confused state of the gentleman's mind and that he has forgotten to an extent that they have in this bill a provision which purports to confer upon the Secretary of the Interior power to condemn water and water rights for the purpose of carrying out this scheme.

Mr. MONDELL. Wherever the State law gives him authority to do so.

Mr. RAY of New York. But it does not say so. The trouble is that the bill does not say so.

Another thing. No State law does, no State law can—I do not care who may frame it—give any power of condemnation of private property unless it be for a public use.

And now I come to a question propounded to me by the gentleman from Maine.

Mr. BELLAMY rose.

Mr. RAY of New York. Let me answer the gentleman from Maine. I trust the gentleman from North Carolina will not interrupt me in a legal argument.

I affirm that the use proposed by this bill is not a public use and you can not make it a public use. What is a public use? Something that is for the benefit of all the people of the sovereignty. In a State it is a public use if it is for the benefit of all the people of the State. In saying this I do not mean that all the people must use it, but all the people must have a right in it—must have a right to have the beneficial use of it. Then the use must be continuous in its nature. Now, let me read from Cooley's Constitutional Limitations. Cooley has always been supposed to be good authority. He remains good authority with me. He remains good authority with the Supreme Court of the United States, because they hold the same doctrine that he does. Now let me read:

Nor could it be—

He is stating the right of eminent domain, and what is a public use—

Nor could it be of importance that the public would receive incidental benefits such as usually spring from the improvement of lands or the establishment of prosperous private enterprises. The public use implies a possession, occupation, and enjoyment of the land by the public at large or by public agencies; and a due protection to the rights of private property will preclude the Government from seizing it in the hands of the owner and turning it over to another on vague grounds of public benefit to spring from the more profitable use to which the latter may devote it.

That quotation is exactly in point. Let us see what you propose to do. For the purpose of a public building—for the purpose of supplying Washington city, which is on the public domain or territory under the seclusive jurisdiction of Congress, with water for all the people to drink—for the purpose of building a courthouse for the United States, or for a public park for the people, or for the purpose of a national cemetery, as at Gettysburg, where all the people may go, where all the people may admire, where all the people have the right to share the benefits, the General Government may condemn the land. Those uses are a public use and for a public purpose, but that is not the purpose here. What do you propose to do?

Now, follow me carefully. Build great reservoirs for the storage of water, build canals, take the water to the arid lands for the irrigation thereof, and distribute that water for the purpose of irrigating this public land. Is the United States to keep that land? Is the United States Government to use that land? No. The moment your irrigation works are constructed and your water stored, you say that private individuals may come upon that land that is to be irrigated, that they may take the land in plots not exceeding 160 acres, I think it is. They are to become the owners of that land and have an interest in that water right, and that such private owners, after a little, shall control the water rights. The land to be irrigated and to be benefited is to pass to private ownership, into private hands. So we irrigate, not for the public, but for speculative purposes, for the purpose of bringing settlers.

Mr. GILBERT. What private property has been taken in the process?

Mr. RAY of New York. Why, the bill proposes to go to the headwaters of streams and wherever they see fit and condemn land and condemn water rights for the purpose of storage, to be carried through canals to arid lands. Now, if we were to keep those lands and the United States were to run them, till them, and rent them, then this would be a public use.

Mr. GILBERT. And those running streams——

Mr. RAY of New York. Oh, but that is not the proposition. We are to sell those lands.

Mr. GILBERT. But those running streams in the States are not private property.

Mr. RAY of New York. That depends altogether on the character of the stream, and the very fact that they are not private property repels the idea of condemnation; and when not public property—most of these small streams are not—we can not condemn for such a use as is proposed, and now the objection comes in. In some instances we are going to take the springs, the small streams that supply the big rivers, divert the water to the irrigation of arid lands far distant, and deprive the adjacent land owners of the water. The large rivers are public streams, in which we have a right as a government under our interstate and foreign commerce powers, under the Constitution; but in the small streams and little springs and rivulets and all that we have no right except to keep them open and undefiled and not interfered with, in order that interstate commerce may not be interrupted or obstructed. May this Government deprive an owner of land of water for his farm in order to irrigate the farms to be sold or given by the Government to others?

Mr. LITTLEFIELD. What are the rights of riparian proprietors in that vicinity?

Mr. RAY of New York. The rights of riparian owners in Colorado and the mining States are different from what they are in the East, South, and other sections. The riparian rights of the Government of the United States exist under the common law as the Supreme Court applies it and is the common-law rule, which is that you may take water in these public streams and divert it temporarily for the use of the owner along their banks, and then you must restore it. That is not the rule in the mining States, but it is the rule of the Government, except as the General Government recognizes the rule adopted in those States in the States.

In Colorado and in California and some of those States, by virtue of necessity, they recognize a different rule. They say that the first appropriator of the water, to the extent of the appropriation, has the right to it as against all comers, so that if a dozen men came and started their mines and took all the water in the stream, all the water there was in a river, and some one came later and established himself lower down, he had no right and has no right in the water, because of the prior appropriation. Now, I have not time to go further into details, but I point out in my report the wide difference in the rules. So, you see, here you have a proposition right in the face of the law, right in the face of the decision of the Supreme Court of the United States, as to riparian rights.

Mr. MONDELL. Will the gentleman allow me to ask him a question?

The CHAIRMAN. Will the gentleman yield?

Mr. RAY of New York. Oh, I can not.

Mr. MONDELL. Just one question.

Mr. RAY of New York. Where you propose to take the water and land of private persons, condemn it for an alleged public use, a use that is not a public use, for the reason that we do not propose to keep these lands when we have provided irrigation for them, we exceed our constitutional powers. We can not execute that part of this proposed law. We propose to sell the land and water rights to private owners. Therefore, as I have stated in the minority views, this is not a public use, and I cite a dozen cases proving it.

Mr. MONDELL. Mr. Chairman, will the gentleman allow me to ask him one question right there?

Mr. RAY of New York. I decline to yield. I now call attention to another phase of this controversy. That is this: The State of Colorado, in the exercise of what she claims to be her sovereign rights, has diverted for purposes of irrigation in Colorado the head waters of one or more of our great streams.

Mr. GILBERT. Would the reservoir be public property?

Mr. RAY of New York. The reservoir itself, if constructed on public land, would be public property, of course.

Mr. BELL. If the gentleman will allow me——

Mr. RAY of New York. I can not yield to the gentleman.

Mr. BELL. I should like to suggest to the gentleman——

Mr. RAY of New York. I do not want your suggestion at this time. Now, when I have declined to yield, please let that end it. You know that my time is limited.

The CHAIRMAN. The committee will be in order. The Chair trusts gentlemen will not interrupt the speaker without his permission.

Mr. RAY of New York. Now, I have just come to the statement of the case, and I want the House to understand it. In the State of Colorado the legislature, claiming the right to irrigate the arid lands of that State, has diverted the headwaters of one or more great rivers that naturally flow into and through the State of Kansas. They have substantially made one or more of these rivers dry at certain seasons of the year, so that the people of Kansas do not find water in the stream for agricultural purposes, nor for purposes of irrigation in Kansas. What has the

State of Kansas done? She has brought suit in the United States Court against the State of Colorado to enjoin her from thus diverting, retaining, and using, for purposes of irrigation, the water that the God of nature designed should run through the State of Kansas.

The State of Colorado demurred to the complaint and the case came to the Supreme Court of the United States, where the demurrer has been overruled, the court thus holding, in effect, that Colorado has no such right to divert and withhold those waters for the irrigation of her own arid lands to the detriment of Kansas. We had better await the final decision of that case before enacting a law of this kind.

The God of nature made the great Mississippi River run from its headwaters in Lake Itasca through to the Gulf of Mexico, and when we formed this Republic we did not take away from the citizens of Mississippi the right to have those waters run down to the Gulf forever, and Congress can not take away or interfere with the right. And so with the headwaters of the Missouri River. We can not store them or take them away or interfere with that right. Why? Because they run through States of this Union that we have recognized as States, that we have ordained as States, and to which we have given the rights of sovereign States.

I read here some comments in cases and on the principle involved, by C. F. Randolph, of the New York bar.

PART SECOND.—III.

KANSAS *v.* COLORADO.

THE CASE STATED.

30. The bill of complaint in Kansas *v.* Colorado recites that the Arkansas River rises in Colorado, runs a long course therein, and then traverses Kansas in a course of 310 miles. It alleges that the State of Colorado itself, and many persons acting under its authority, are even now diverting such quantities of water for irrigation purposes "that no water flows in the bed of said river from the State of Colorado into the State of Kansas during the annual growing season, and the underflow of said river in Kansas is diminishing and continuing to diminish."

But be it noted that for diversions under existing grants no relief is sought in the present suit. The gravamen of the bill is the allegation that Colorado intends to maintain the present diversion by renewing grants as they expire by limitation, and to increase it by new irrigation works, both public and private. And the bill asserts that if the diversion continues to increase the bottom lands of the Arkansas Valley in Kansas "will be injured to an enormous extent, and a large part thereof will be utterly ruined, and will become deserted and be a part of an arid desert."

31. Colorado demurs to the bill for ten specific causes. The seventh and tenth allege defects in pleading, and are not material to this general discussion. The first six causes present the objection that the bill does not disclose a controversy between States within the meaning of the Federal Constitution. It is contended that any injury resulting from the acts complained of creates, at most, a controversy between persons in Colorado who actually divert water, and persons in Kansas who suffer from the diversion.

A like contention was made in Missouri *v.* Illinois, where a State sued on account of threatened depreciation of the quality of waters used by its citizens, a case not substantially different from a threatened diminution of supply, but the court said, "That suits brought by individuals, each for personal injuries threatened or received, would be wholly inadequate and disproportionate remedies requires no comment;"[1] and this ruling is even more pertinent here, for in the Missouri case a multitude of suitors would at least have found a single defendant in the drainage canal corporation, while here a multitude must essay the difficult, if not impossible, task of apportioning liability among a multitude of defendants in Colorado. Conceding that a State can not properly implead another when adequate relief is otherwise obtainable, it is not perceived that the case at bar should be dismissed on this grounds, and so we pass on to the question whether Kansas and Colorado are actually in controversy.

32. Kansas first alleges injury to a small tract of land, the site of a State reformatory. Here is a proprietary interest on account of which the State may bring suit, but, assuming for the moment the liability of Colorado, judgment on this score alone would be a techinal victory for Kansas of little value. It would be intolerable to enjoin Colorado from bringing vast tracts of arid land into cultivation merely to enable Kansas to raise vegetables on a reformatory farm.

The real motive of the suit lies in the allegation of damage threatened to a large section of territory held in private ownership. To avert this damage Kansas comes into court as a political corporation asserting a right to protect its community. If it be argued that as a State can not collect debts due its citizens from another State[2] it can not defend their landed interests, the sufficient answer in the case at bar is that the nature and magnitude of these collective interests make their preservation a matter of public concern. And, if the support of precise authority be required for this statement, it may be found in Missouri *v.* Illinois, where the court said:

"It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be conceded that, if the comfort and health of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. * * * The health and comfort of the large communities inhabiting those parts of the State situated on the Mississippi River are not alone concerned, but contagious and typhoidal diseases introduced in the river communities may spread themselves throughout the territory of the State. Moreover, substantial impairment of the health and prosperity of the towns and cities of the State situated on the Mississippi River, including its commercial metropolis, injuriously affects the entire State."[3]

33. Beyond the public and private lands specified, there is really involved in this suit an interest which we hope the Supreme Court will place definitely among the rights of a State maintainable in interstate suits, a peculiar public interest in water, wholly independent of any private interest or right therein that may happen to be vested by local law, and which is not limited by the use actually made of water through diversion, but is defined so broadly that it will embrace even the maintenance of climatic conditions due to the presence of water. Always a State should be competent to assert this interest, except, of course, where it must yield to Federal power in respect of navigation.[4]

[1] 180 U. S., 240.
[2] Supra, sec. 11.
[3] 180 U. S., 241.
[4] Infra sec. 34.

I conclude that the pleadings in the case at bar present a controversy between States. Kansas properly complains as well in its political as in its proprietary capacity; Colorado is properly impleaded, because the diversions of water complained of are and can be effected only through State authorization.

THE GOVERNING PRINCIPLE.

34. Kansas and Colorado are now joined in controversy, and it is material to determine the governing rule. This inquiry necessitates an appreciation of some elementary principles of the law of waters affecting States of the Union both in their domestic administration and in their relations to the Federal Government and to other States. Of the first case it is sufficient to say that, of course, State control over waters in respect of persons and property within its jurisdiction is determined by State laws.

Whatever may be the power of a State in respect of waters it must be exercised in subordination to that Federal authority derived from the commerce clause of the Constitution.

"The jurisdiction of the General Government over interstate commerce and its highways," says the Supreme Court, "vests in that Government the right to take all needful measures to preserve the navigability of the navigable water courses of the country, even against any State action."[1]

But in discussing the law of waters suitable to the great arid region of the United States, we should leave this peculiar Federal interest in suspense. In this region irrigation is so vital, navigation, generally speaking, so negligible, that the Federal Government is willing to permit, nay, it should be eager to encourage the one with little regard for its effect on the other. And the Government loses nothing by this partiality, for should a State actually divert waters to the injury of navigation, it may intervene. Indeed, it appears that in acts of Congress permitting States to authorize the cutting of ditches through public lands the privilege does not carry a right to impair navigation.[2]

35. Regarding the position of a State in respect of waters on public lands of the United States that may happen to lie within its borders the Supreme Court says:

"In the absence of specific authority from Congress a State can not by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters, so far, at least, as may be necessary for the beneficial uses of the Government property."[3]

But the question remains whether these public lands are so intimately connected with the sovereign, as distinguished from the proprietary interests of the United States, as to lie beyond the reach of the State's eminent domain. Personally I am of the opinion that these lands are not inevitably beyond the expropriating power of the States for all purposes.[4] I can conceive of cases where the public needs of a State should be held superior to the proprietary interests of the United States. But the point has not been determined by the Supreme Court,[1] and it is not necessary to discuss it here.

36. Coming to the measure of control over waters which one State can maintain against another, we find that in the case at bar Colorado arrogates the right to utilize every drop of water in that section of the Arkansas River basin lying within the State, regardless of the effect upon Kansas. This position is not merely a legal inference coming from the filing of a demurrer, and thus admitting technically the truth of the facts alleged in the bill of complaint. It is affirmed in the following causes of demurrer:

"Eighth. Because the acts and injuries complained of consist in the exercise of rights and the appropriation of water upon the national domain in conformity with and by virtue of divers acts of Congress in relation thereto. Ninth. Because the constitution of the State of Colorado declaring public property in the waters of its natural streams and sanctioning the right of appropriation was enacted pursuant to national authority, and ratified thereby at the time of the admission of the State into the Union."

So far as the eighth cause refers to present diversions of water it is to be noted that the suit of Kansas is not aimed at any irrigation interests in Colorado which may be defined as "vested," and in this discussion we shall not consider at length such interests in either State, being concerned chiefly with the public matter in controversy.

So far as the eighth cause insinuates that Congress, in authorizing diversions of water on the public domain, confers upon a State a right exclusive against other States, it must be objected that Congress does not, indeed it can not, thus exalt one State to the detriment of another. And the same objection rebukes the claim, advanced in the ninth cause of demurrer, that Congress, by approving the constitution of Colorado, has consecrated a right in the State to withhold water from its neighbors.

Stripped of all support from Federal statutes, which, I repeat, can not be invoked by one party to an interstate controversy as giving it legal advantage over another, it is perceived that Colorado is really insisting that this dispute between two States shall be determined by the law of one—that the constitution and statutes ordained by the people of Colorado for their own governance shall be accepted by the Supreme Court as the ruling law in a suit brought by Kansas. This position is untenable, as I have shown.[5]

37. Kansas opposes to Colorado's claim of monopoly what we may call a local theory of law, as distinguished from the general theory we shall consider later. This local theory is introduced by the statement that the land lying in Colorado and Kansas and drained by the Arkansas River and its affluents was brought within the domain of the United States partly by the Louisiana treaty and partly by treaty with Texas; that this land was included in the Territory of Kansas; that later a part was included in the State of Kansas and the remainder in the Territory, afterwards the State, of Colorado.

It is alleged that under the sovereignty of the United States the land became subject to the common law, and especially to the general rule that every riparian owner is entitled to the continued natural flow of a stream. And it is argued that when a section of United States territory is once subjected to this common-law rule the subsequent drawing of State lines across it leaves the old rule still effective as between the new States.

Even assuming that this argument would lead to a just decision in the case at bar, I am not sure that it would furnish a rule applicable throughout the Republic.

Suppose that after the Territories of New Mexico and Arizona are admitted to statehood a controversy like Kansas *v.* Colorado should arise between them, and it was found that the common-law rule did not prevail in that section of country prior to the admission of the States. Should the complaining State fail for this reason? If so, there is no uniform rule for the determination of interstate controversies in respect of waters. Yet a uniform rule is certainly desirable, and I believe that it is imperative, for the reason that the constitutional equality of the States requires that each subject of controversy shall be determined by a general principle of law, so that like rights and duties shall be attributed to each State.[6]

38. What general principle should the Supreme Court announce as the governing rule in Kansas *v.* Colorado?

[1] U. S. *v.* Rio Grande Irrigation Co., 174 U. S., 703.
[2] See U. S. *v.* Rio Grande Irrigation Co., 174 U. S., 706.
[3] U. S. *v.* Rio Grande Irrigation Co., 173 U. S., 703.
[4] See The Law of Eminent Domain, sec. 59.
[5] See Van Brocklin *v.* Tennessee, 117 U. S., 161.
[6] Supra, sec. 26.

"The unquestioned rule of the common law," says the court in a recent case, "was that every riparian owner was entitled to the continued natural flow of the stream. * * * While this is undoubted, and the rule obtains in those States of the Union which have simply adopted the common law, it is also true that as to every stream within its dominion a State may change this common-law rule, and permit the appropriation of the flowing waters for such purposes as it deems wise."[1]

In several States and Territories this common-law rule has been superseded by what is called "the doctrine of appropriation," the gist of which seems to be that the first comer may divert as much water from a stream as is necessary for the development of his mining or agricultural lands, whether these are adjacent to the stream or not, and later comers acquire rights in the order of priority.

The court will find no proper rule in a strict adherence to either of these doctrines. Approval of the common law might bar a State from a reasonable use of water for irrigation. Approval of the law of prior appropriation would encourage interstate races for water prizes, contrary to the fraternal purpose of the Federal compact. Furthermore, this law might permit a lower State to assert against an upper one a right to receive only so much water in a stream as is actually diverted from the stream. Such a rule would be unfair, even in the arid regions. In the country at large it would be most mischievous, because it ignores, among other things, the utility of streams for the transportation of logs, as natural drains, and their influence on climate.

39. From these inadequate theories of domestic law we turn to international law.

Complaints by one nation against another on account of diversion of water are not unknown. Our State Department has complained to Great Britain of an obstruction to the flow of a stream in Maine caused by acts committed in Canada, and to Mexico of the diversion of the waters of the Rio Grande.[2] Mexico has complained of diversion on this side of the boundary, and our Senate has under consideration the appointment of a commission to discuss international water rights with Canada.

The interesting point in such cases is the invocation of the principle of a common right in international water courses. In respect of navigation this right has long been asserted by enlightened jurists, and throughout the greater part of the civilized world it is now either respected on principle or secured by agreement. Serious diversions of international streams have been too infrequent, perhaps, to excite much attention, but were such a case brought to arbitration the tribunal would surely refuse to announce, as a principle of international law, that an upper State is entitled to divert all the water from a stream. It would probably affirm the right of the State to divert a reasonable quantity, subject always to the paramount interest of navigation.

40. The physical and political conditions which make the irrigation of our arid region so difficult an undertaking are nowhere paralleled in a civilized country more closely than in Australia, where, indeed, the union of the colonies under the constitution of the new Commonwealth was partly inspired by the desire to refer intercolonial disputes over waters to a common authority.[3] A learned commentator on the Australian constitution says:

"The consideration of the extent of the restriction imposed upon the Parliament of the Commonwealth by section 100[4] of the constitution involves the consideration of the question of the power of a State to authorize the diversion of the waters of a river flowing through it, or a diminution of their quality, to an extent which would affect the rights of riparian proprietors in another State.

There is not any restriction directly and expressly imposed by the Constitution upon the several States in respect of their use of the rivers of the Commonwealth for the purposes of conservation or irrigation, but it would be an anomalous result if each State has the power under the Constitution to divert the water of a river for the benefit of the residents of the State, or to diminish the quantity of it, to the detriment of the residents of another State, whether the river is navigable or not, and that the Parliament of the Commonwealth can not for any purpose that would be beneficial to all the States, or to a majority of them, do the same thing. It has already been stated that the imposition of the restriction imposed on the Parliament of the Commonwealth by section 100 implies that in the absence of any such restriction Parliament would have a larger power to control the use of the waters of the rivers of the Commonwealth than that which the Constitution has conferred upon it; and the terms in which the restriction is imposed indicate that such larger power would be exercisable by the Parliament of the Commonwealth as a part of its legislative power with respect to trade and commerce between the States and with other countries. But the Constitution has not conferred any legislative power upon the States with respect to such trade and commerce; and the power of the Parliament of the Commonwealth with respect to that matter is from the nature of the power necessarily exclusive.

If the several States were so many independent nations, any interference in one of the States with the waters of a river that flowed through that State and another State to an extent that would produce any damage to the riparian proprietors in the other State would be a matter of international complaint, for which redress in the last resort would be sought by war.

"But the States of the Commonwealth are constituent parts of the same nation, and any act on the part of any one of them which inflicts injury on the residents of another State of the Commonwealth, and which would be a matter of international complaint if the two States were separate and independent nations, is a matter for redress in the high court of the Commonwealth under the provision of the Constitution which confers upon that court jurisdiction in all matters between States. It has been decided by the Supreme Court of the United States of America that under the provisions of the Constitution of that country which extend the judicial power of the United States to 'controversies between two or more States,' one State may file a bill in equity against another State to determine the question of a disputed boundary. Under the Constitution of the Commonwealth the high court has clearly jurisdiction to determine a similar dispute between two States of the Commonwealth, and it must as a logical sequence have jurisdiction of the question whether any portion of the territory within the boundaries of one State can be deprived of all that makes that portion of its territory valuable by the aggressive legislation of another State."[5]

The words I have italicized seem to anticipate for the high court of Australia a broader jurisdiction than our Supreme Court possesses,[6] and if this anticipation be realized it will be because the States of Australia are of lesser dignity than ours. In point of law the commonwealth of Australia is a colony of Great Britain, formed by the union of several colonies and receiving its constitution from the British Parliament, while sovereign States adopted our Constitution, reserving important powers to themselves. But the last sentence of Judge Clark's comment suggests a question within the jurisdiction of our Supreme Court; and I think it admits of but one answer.

Assuming that this question is involved in Kansas *v.* Colorado, the court should announce, as a general proposition of law, that one State can not maintain against another a right to divert all the water of an interstate stream within its dominions, and go on to complete an equitable rule for the enjoyment of interstate waters by declaring that, presumably, each riparian State may divert a portion. Thus the principle of proportional rights, commended by international law to independent sovereigns, will be adjudged to be the general rule between our States. This rule is not reducible to a practical formula. How it shall be applied in a given case, whether, peradventure, it shall be found applicable at all, will depend upon the result of a thorough investigation of the relative resources and needs of the States in controversy, for the equitable purpose of the rule would be defeated were its applications invariably treated as purely mathematical problems. The equitable right may differ widely from the mathematical proportion.

METHOD OF RELIEF.

41. Kansas prays that the State of Colorado be restrained from authorizing any person or corporation to divert water from the Arkansas River, except for domestic use; from granting any larger use, or any renewal of present irrigation privileges, and from constructing and operating irrigation works on State account.[1] In fact, the Supreme Court is asked bluntly to enjoin the legislature of Colorado from passing laws of a certain description.

Fortunately we need not inquire how the court would attempt to muzzle a State legislature or punish disobedient legislators for contempt.[2] Should the court decide that a further diversion of water will inflict an injury on Kansas, it can grant relief without impairing the sovereignty of Colorado, even if the legislature should be tempted to disregard the decision.

Conceding that an injunction against the State of Colorado could not be directed specifically to its legislature, it would nevertheless pave the way to adequate relief.

Our courts are incompetent to prevent the passage of an act by a sovereign legislature. This incompetency is common to courts the world over. But they are competent to declare a passed act to be no law. This competency is unique and is due to our peculiar custom of confiding to the judiciary the power of determining the obligations of constitutions.[3] The Supreme Court would not stretch its powers by ignoring statutes passed by Colorado in contempt of a decision stigmatizing them as violative of the constitutional equality subsisting between it and another State. And then the court could prevent any State official or private person from diverting water under the pretended authority of an act.

This coercion of the servants or grantees of the State need not attaint its dignity in any forbidden manner. A court that has given judgment in ejectment against the commandant of a United States military station and cemetery at the suit of a claimant, despite the protest of the Federal Government,[4] will find a way to prevent a person in Colorado from bringing water into a ditch.

Relief for the complainant in the case at bar seems to require no more serious intervention in State affairs than was contemplated in Missouri *v.* Illinois. As the court there denied the power of a State legislature to authorize a nuisance to property in a neighbor State, so here it may deny the power to authorize what is, in effect, a trespass upon such property. In Missouri *v.* Illinois, the court said:[5]

"We are dealing with the case of a bill alleging in express terms that damage and irreparable injury will naturally and necessarily be occasioned by acts of the defendants, and where the defendants have chosen to have their rights disposed of, so far as the present hearing is concerned, upon the assertions of this bill."

And in that case the demurrers were overruled and leave given to the defendants to file answers to the bill. If the case of Kansas *v.* Colorado takes this course the principle of proportional rights in interstate waters will be established, leaving the question as to its application in the case at bar to be determined in further proceedings.

41*a*. The greater part of sections 30-41 were substantially finished when, on April 7, the Supreme Court gave its opinion in Kansas *v.* Colorado, and I let them stand because, while the court overrules the demurrer of Colorado, it suspends judgment, not only on the merits of the case, but on the main questions of law. Chief Justice Fuller says:

"Applying the principles settled in previous cases, we have no special difficulty with the bare question whether facts might not exist which would justify our interposition, while the manifest importance of the case and the necessity of the ascertainment of all the facts before the propositions of law can be satisfactorily dealt with lead us to the conclusion that the cause should go to issue and proofs before final decision. * * *

"Without subjecting the bill to minute criticism, we think its averments sufficient to present the question as to the power of one State of the Union to wholly deprive another of the benefit of water from a river rising in the former, and, by nature, flowing into and through the latter, and that, therefore, this court, speaking broadly, has jurisdiction.

"We do not pause to consider the scope of the relief which it might be possible to accord on such a bill. Doubtless the specific prayers of this bill are in many respects open to objection, but there is a prayer for general relief, and under that, such appropriate decree as the facts might be found to justify, could be entered, if consistent with the case made by the bill, and not inconsistent with the specific prayers in whole or in part, if that were also essential. Taylor *v.* Insurance Company, 9 How., 390, 406; Daniell, Ch. Pr. (4th Am. ed.), 380. * * *

"Sitting, as it were, as an international, as well as a domestic tribunal, we apply Federal law, State law, and international law, as the exigencies of the particular case may demand, and we are unwilling, in this case, to proceed on the mere technical admissions made by the demurrer. Nor do we regard it as necessary, whatever imperfections a close analysis of the pending bill may disclose, to compel its amendment at this stage of the litigation. We think proof should be made as to whether Colorado is herself actually threatened to wholly exhaust the flow of the Arkansas River in Kansas; whether what is described in the bill as the "underflow" is a subterranean stream flowing in a known and defined channel, and not merely water percolating through the strata below; whether certain persons, firms, and corporations in Colorado must be made parties hereto; what lands in Kansas are actually situated on the banks of the river, and what, either in Colorado or Kansas, are absolutely dependent on water therefrom: the extent of the watershed or the drainage area of the Arkansas River; the possibilities of the maintenance of a sustained flow through the control of flood waters; in short, the circumstances, a variation in which might induce the court to either grant, modify, or deny the relief sought or any part thereof.

[1] Supra, sec. 25.
[2] Wharton's International Law Digest, sec. 20.
[3] Bryce, Studies in History and Jurisprudence, 306.
[4] "The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation."
[5] Judge A. Inglis Clark, Studies in Australian Constitutional Law, p. 110.
[6] Supra, sec. 19. Compare Professor Moore's Observations, supra, sec. 32*a*.

[1] Supra, sec. 40.
[2] Supra, secs. 28, 29.
[3] The courts of the Commonwealth of Australia have power to invalidate acts of the federal and state legislatures for repugnancy to the constitution, but the conditions are not precisely the same as those under which our courts act, Australia being, in theory of law, still a dependency of Great Britain.
[4] U. S. *v.* Lee, 106 U. S., 196.
[5] 180 U. S., 248.

"The result is that, in view of the intricate questions arising on the record, we are constrained to forbear proceeding until all the facts are before us on the evidence.

"Demurrer overruled, without prejudice to any question, and leave to answer."

IV.—Comprehensive Irrigation.

42. The affirmance of a right in each State traversed by an interstate stream to a reasonable use of its waters might of itself somewhat embarrass the further irrigation of arid lands by afflicting States with uncertainty in the face of a substantial yet unascertained limitation upon their powers of diversion.

It is to be hoped that this embarrassment will be sufficiently serious to compel the adoption of means whereby the reasonable apportionment of water among the States of the arid region shall be effected under a comprehensive system of irrigation for which science must present the plans and law provide for their execution. While understanding that no scheme, however admirable in theory, is likely to remove all interstate differences regarding the use of water in an arid region, it should be possible to devise a system that will impound the available supply and distribute it with approximate fairness.[1] A system broad and far-reaching in conception, looking ultimately to the utilization of all available waters, and taking no account of State lines except in the important matter of apportionment.

43. The first question of law in regard to the system is whence shall come the power to authorize it. Not unnaturally there is some disposition to turn to the Federal Government. As the proprietor of vast tracts of arid land within the States, and as the ruler of Territories which should be included within the system, the direct interest of this Government is very great, to say nothing of its general concern in the opening of new regions to settlement.

But the system will necessarily affect property within State jurisdiction, and the Federal Government is incompetent to enter a State and override its laws in order to promote irrigation. The implications of the Constitution do not confer upon Congress any power in respect of State waters except in the matter of navigation.

Perceiving the inability of the Federal Government to invade a State and distribute its waters, and realizing the inability of the States to secure an equitable apportionment of water by independent action, we are led to inquire whether the requisite authority for comprehensive irrigation may not be derived from a compact between the States interested, in which the Territories, or the United States as their representative, shall join. In Article I, section 10 of the Constitution, we read:

"No State shall enter into any treaty, alliance, or confederation * * * No State shall without the consent of Congress * * * enter into an agreement or compact with another State or with a foreign power."

The distinction between the "treaty, alliance, or confederation" absolutely forbidden, and the "agreement or compact" conditionally permitted is not obscure. The United States will not tolerate an imperium in imperio, or any combination of States against other States, or any connection between a State and a foreign country. But compacts not compromising the supremacy of the United States over the several States, or the equality of the States among themselves, may be made with the consent of Congress. And it seems that in some cases this consent need not be given in advance, as where the "agreement relates to a matter which could not well be considered until its nature is fully developed," and sometimes, indeed, consent may be established by implication.[2]

Compacts or agreements between States have occasionally been made, and usually deal with boundary questions. But there is no reason why States should not combine to secure a more equitable enjoyment of a common interest in water than is attainable by independent action, and I venture to outline a plan whereby this object may be realized.

44. Let the States and Territories interested make a compact creating a public corporation for the promotion of irrigation. This corporation shall be charged, at all events, with the planning, constructing, and maintaining of a comprehensive system, and with the general apportionment of water among the several parties to the compact. But it may appear that the local distribution of a State's share will be best administered at the State's discretion, leaving it free to utilize public or private agencies acting under its own laws and customs.

The governing body of the corporation must be impartial as between the States, and this requisite suggests that the power of appointing its members be conferred upon the Federal Government, which shall select them from nonresidents of the States interested.

The governing body must be inspired by the best scientific knowledge, and this points to the selection of some of its members at least from the corps of scientists and engineers in the Federal service. Each State should have a representative near the governing body for purposes of suggestion and consultation.

Considerations of economy and of normal development require that the work of actual construction shall be gradual, but surveys should be made at once for a system adequate to collect and conserve the whole supply of water available for irrigation, and locations for reservoirs and arterial canals be preempted by acquisition, if on private, by reservation, if on public land.

45. The powers of the corporation would depend, of course, upon the compact and upon such ancillary State and Federal legislation as might be advisable, and any suit at law involving their exercise would be justiciable in the Federal courts. One power, however, should be specially remarked even in this brief sketch—the eminent domain. States wherein irrigation is deemed of vital importance are wont to authorize the expropriation of land for the necessary works, and the Supreme Court has sustained State tribunals in treating this as a taking for public use.[3]

The power of expropriation must be enjoyed by the corporation in question, and it must emanate from the States, because the Federal Government is not empowered to exert its eminent domain in a State except for Federal uses. Now, it is settled that a State can neither lend its eminent domain to promote the public uses of another State, nor exert it in another to promote its own, for each person holds his property subject only to the needs of his own sovereign. Yet the corporation must be free to locate irrigation works and provide for the distribution of water, regardless of State lines; for example, it may be advisable to build a reservoir in Colorado and utilize the water in Kansas. At first blush this might seem irregular, but, comprehending that each reservoir and canal is but a section of a great system intended to distribute to each State a fair proportion of interstate water, not otherwise obtainable, it is perceived that there is really no question of expropriation for foreign use; there is a joint exercise of the eminent domain by several States for the common benefit.

Some years ago I inquired "whether an undertaking considered as a whole may not be a public use common to two States, so that joint and interdependent grants of the eminent domain may cure deficiencies incident to independent grants."[1] Such a possibility is plainly contemplated in the following observation of the Supreme Court regarding a supposed case calling for a joint use of State powers, including, in all probability, the eminent domain:

"If the bordering line of two States should cross some malarious and disease producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of Congress for the bordering States to agree to unite in draining the district, and thus removing the cause of disease."[2]

In case the exigencies of the system demand the appropriation of private irrigation works here and there, these may be taken on payment of just compensation.

46. I shall not consider now the problems of finance, or the practical rule for the just apportionment of water, or the method of dealing with vested rights in private works of irrigation and with the public domain of the United States, but we may anticipate that a disinterested corporation of comprehensive scope and power will handle all vexatious questions with greater skill than can be applied under present conditions, which, if report be true, too often encourage a rough contest for water. My interest in the practical side of irrigation is satisfied for the present by a very broad suggestion of method for effectuating the principle of proportional rights in interstate waters which, I trust, will yet be declared by the Supreme Court in Kansas *v.* Colorado.

V.—General Conclusions.

47. The principle of proportional rights in interstate waters is of far-reaching importance. We Americans are coming to realize, what has long since impressed itself in crowded countries, that consumption tends to press more and more seriously upon very important national resources. We are beginning to perceive that prevision and thrift must replace the hand-to-mouth habit so naturally acquired by a small community scattered through a vast and rich domain, and so difficult to shake off as the community increases. Among all our resources water is unique. It is necessary to our existence; for some of its utilities there is no possible substitute; it is the only one that distributes itself.

Evidently a resource of such transcendent value and peculiar distribution may be of interstate concern in various ways. The Supreme Court has already recognized a State's interest in the quality of interstate waters by denying the right of another State to authorize their pollution to the danger point.[3] Regarding the quantity of water, it may be decided some day that States traversed by an interstate stream have an interest in the conservation of its supply that will enable a lower State to restrain an upper one from permitting the depletion of its sources through the wasteful cutting of forests. But be this as it may, actual diversion by an upper State to an unreasonable and injurious extent should be preventible through interstate suit, whether the object of diversion be the irrigation of arid lands, as in Kansas *v.* Colorado, or the supply of cities, or the creation of hydraulic power.

48. Conversely, it is quite as important that an upper riparian State should be entitled to effect a reasonable diversion of water. While it may be prevented from abusing a natural advantage by diverting all the water, the use of this should not be prohibited altogether. Upper States must not be barred from taking a reasonable advantage of their situation in order that the lower States may enjoy an opportunity to divert the entire natural flow.

To illustrate the general subject, let us consider the case of Pine and Muller *v.* The City of New York, just decided by the United States Supreme Court.[4] The Byram River is a small stream, the west branch of which rises in New York, the east in Connecticut.

These branches meet at a point in Connecticut, whence the stream runs a short course to Long Island Sound. The city, acting under the authority of the New York legislature, has nearly completed a dam across the west branch, a few hundred feet from the Connecticut line, for the purpose of impounding and diverting water to the use of its inhabitants. The city admits that at certain times, perhaps, all the water above the dam will be diverted, leaving the stream to be supplied from the east branch and from such water of the west branch as may rise below the dam. The plaintiffs own land on the main stream, which will suffer substantial injury by reason of the diversion.

They could not agree with the city in regard to compensation. They refused to go to the New York courts for an assessment of damages under the New York statutes, and filed a bill for injunction in the circuit court of the United States. The injunction was granted;[6] it was affirmed by the circuit court of appeals,[5] and the case was brought to the Supreme Court on certiorari. The court found that the plaintiffs had not been diligent in asserting their rights, but had allowed large expenditures to be made on a work of great public concern without due protest. For this reason it remanded the case to the circuit court in order that the plaintiffs' damages, if any, might be ascertained. After damages shall have been assessed, either in equity or, if the plaintiffs prefer, by a jury, the city upon paying them will be entitled to divert the water. If it does not pay within a fixed time it will be enjoined.

49. The disposition of Pine *v.* New York made it unnecessary for the court to decide the interesting questions of law argued, but it said, speaking by Justice Brewer:

"We assume without deciding that, as found by the circuit court, the plaintiffs will suffer substantial damage by the proposed diversion of the water of the West Branch. Also, without deciding, we assume that, although the West Branch above the dam and all the sources of supply of water to that branch are within the limits of the State of New York, it has no power to appropriate such water or prevent its natural flow through its accustomed channel into the State of Connecticut; that the plaintiffs have a legal right to the natural flow of the water through their farms in the State of Connecticut, and can not be deprived of the right by and for the benefit of the city of New York by any legal proceedings either in Connecticut or New York; and that a court of equity, at the instance of the plaintiffs, at the inception and before any action had been taken by the city of New York, would have restrained all interference with such natural flow of the water."

If the above statement presents the mature opinion of the court, it is conceivable that a single riparian proprietor in one State may retard the growth, if not menace the health of a great city in another State by preventing access to a supply of water which may be the only one available from an economic, perhaps even from a physical standpoint.

May such a hardship be avoided by holding that the property right of the riparian owner is merely in the water itself, and not in its flow; and that,

[1] Mr. F. H. Newell, of the United States Geological Survey, says that private enterprise "has already built irrigation works sufficient to utilize nearly the whole available flow of the streams in the arid regions during the irrigation season. Further progress in irrigation can only come through the storage of flood waters in reservoirs" (Irrigation in the United States, p. 405). In regard to the volume of these floods President Roosevelt says in his message of December 3, 1901: "The western half of the United States would sustain a population greater than that of our whole country to-day if the waters that now run to waste were stored and used for irrigation."

[2] See Virginia *v.* Tennessee, 148 U. S., 521.

[3] Fallbrook Irrigation District *v.* Bradley, 164 U. S., 112.

[1] The Law of Eminent Domain, sec. 29.

[2] Virginia *v.* Tennessee, 148 U. S., 518.

[3] Missouri *v.* Illinois, 180 U. S., 208.

[4] April 7, 1902.

[5] Pine *v.* N. Y., 103 Fed. Reporter, 337.

[6] 112 Fed. Reporter, 98.

therefore, while this water is in an upper State it may be taken for public use by that State? If so, the owner is simply in the position of a nonresident whose property is subject to expropriation in the State where it lies, or, as we should say here, where it is caught, and he must submit to the rule of that State's laws. This view was advanced by Judge Wheeler, of the circuit court of appeals, who said in a dissenting opinion in Pine *v.* New York:

"The defendant has done nothing in question here outside the State of New York. The deprivation of water complained of was wholly within that State, and if the plaintiffs have any rights in the water taken they exist in that State and were subject to and were taken under the eminent domain of that State."

I do not think the Supreme Court should approve or does approve Judge Wheeler's proposition. On the contrary, I think that the assumptions of the court in Pine *v.* New York, which I have quoted, must be accepted as positive affirmations of law. It must be understood that when a private suitor is quick to defend his interests the court will neither override the common law in respect of riparian rights, nor revolutionize the theory of the eminent domain by permitting one State to condemn property in another, even to prevent the embarrassment of a great community by a stubborn individual.

Yet, when we contemplate the fraternal relation of the States, and the welding of their people into a single nationality by a common allegiance, it is inconceivable that any one of these States should be barred from making a use of water, thoroughly reasonable from any standpoint and vitally important from its own, by a citizen in another State who chooses to oppose his petty interest. In my opinion such a hardship can be avoided by invoking the principle of proportional rights in interstate waters which I have endeavored to establish.

If a State be pressed by reasonable necessity to divert water from an interstate stream and find its purpose likely to be balked by persons in a lower State, let it file an original bill in equity against that State for the ascertainment of its proportional right.

In adjudicating this interstate suit the court will be free to apply the principles of international law[1] and will ascertain, approximately, the share of the complainant State in the stream. The interstate controversy will then be determined. But the court may deem it inequitable to allow the complainant to take its share, apportioned with respect to the board requirements of States, without regard to private interests in the lower State.

For I am not prepared to say that when the rule of proportional rights is applied to a stream by allowing to the upper State—for example, one-third of the volume—it should be presumed that a riparian proprietor in the lower State was never entitled at common law to but two-thirds of the actual flow, the other third having come by grace. Generally speaking, I prefer to consider an interstate water suit as a method for relieving a public emergency and laying down a rule for public guidance with the least possible disturbance of established private interests in either State, and this view is justified on broad principles of public policy. If, therefore, the Supreme Court finds that persons in the lower State will be deprived of property by the diversion of water, it may order an assessment of damages and their payment by the complainant State before it exercises its rights.

While the result will be that private property in one State is, in fact, taken for public use in another, there will be no technical violation of the law of eminent domain. The case will be not unlike an international negotiation culminating in a treaty, wherein private interests are subordinated to public exigencies with this difference, perhaps, that here the persons affected may be assured of receiving full compensation.

50. By the preservation of sources, the storing of flood waters, and, always, by economy of use the supply of waters should be conserved in the regions where the demand is large and increasing. But, however strictly these practices shall be followed, interstate water controversies in other sections of our country than the arid region and for other purposes than irrigation are not improbable. We should anticipate their adjustment by the principle of proportional rights, equitably applied in each case with regard to the facts.

NEW YORK, *April-May, 1902.*

Mr. MARTIN. Will the gentleman yield?

Mr. RAY of New York. Certainly.

Mr. MARTIN. In that very case to which the gentleman refers, Kansas *v.* Colorado, is it not true that the Supreme Court of the United States, in sustaining that demurrer, have said they have done so pro forma, in substance?

Mr. RAY of New York. My friend is all wrong——

Mr. MARTIN. And have they not committed themselves?

Mr. RAY of New York. My friend is all wrong.

Mr. MARTIN. I have not asked my question yet.

Mr. RAY of New York. They did not sustain the demurrer at all. They overruled it.

Mr. MARTIN. I was not through with my question when you presumed to answer it.

Mr. RAY of New York. They did not sustain the demurrer; they overruled it.

Mr. MARTIN. That is what I intended to say. In overruling the demurrer, did not the Supreme Court in substance declare that in so doing they did not commit themselves upon the question as to whether one State has the right to withhold the waters that otherwise in this arid country would pass through a State below, but that they considered that the questions involved are of such importance that there ought to be an answer in the case and the facts thoroughly investigated? Is not that the purport of the decision?

Mr. RAY of New York. They have stated in substance that they are not to be considered as having passed on the rights of the States or the law of appropriation of waters for irrigation purposes. Now, let me call your attention to another case.

Mr. MANN rose.

Mr. RAY of New York. I desire to yield to my friend from Illinois.

Mr. MANN. I was going to ask very much the same question, whether the Supreme Court had passed upon the merits?

Mr. RAY of New York. Not absolutely nor finally.

Mr. MARTIN. No, they did not at all.

[1] See supra, secs. 25, 26, 39, 40.

Mr. RAY of New York. They did not sustain the demurrer, but they overruled it, and they say that the question should be tried on the merits; but they plainly intimate that if the statements of the bill of complaint are true, then the State of Kansas has a cause of action.

Mr. MARTIN. The reason I interrupted the gentleman——

Mr. RAY of New York. Oh, that is all right.

Mr. MARTIN. Was because the conclusion that you drew in your argument was that they had thereby virtually held——

Mr. RAY of New York. The conclusion I drew from it is this: That when the Supreme Court of the United States have a demurrer presented to them for consideration, if they find in the complaint no cause of action, they will sustain the demurrer. If they find a probable cause of action, they will overrule it.

But now let me invite your attention to another case that arose between citizens of the State of Connecticut and the city of New York. It is referred to in the remarks of Mr. Randolph quoted. There is a stream rising in the State of New York, two branches of it, which flow east, both passing from New York into the State of Connecticut. There were farmers in Connecticut all along the banks of that stream who have used that water ever since the State of Connecticut has been settled—that is, they and their predecessors in title.

The city of New York went to that stream in the State of New York—one branch—and built a dam some years ago, thus damming up that water and preventing the farmers of the State of Connecticut and the mill owners having the use of it. These farmers brought suit against the city of New York. They brought suit in the circuit court for an injunction to restrain the city of New York for thus holding back and damming and diverting that water, claiming that it had no right to prevent its flow into the State of Connecticut. The circuit and district courts held with these farmers in Connecticut. The case was appealed to the Supreme Court of the United States. The Supreme Court of the United States reversed the district and circuit courts, but upon this ground, mind you: That the landholders in Connecticut by their own laches had permitted the city of New York to erect the dam, expend large sums of money, and take that water; and therefore they had assented to the diversion and could not at this late day ask for an injunction; but in the plainest kind of terms, through Justice Brewer, who, I think, wrote the opinion—and you will pardon me if I err in that—held in the plainest kind of terms, as I read it, that if they had moved in time, before a large amount of money had been expended—in other words, if they had not in effect assented—they could have restrained the construction of the dam and the diversion and appropriation of the water by the city of New York.

Mr. LITTLEFIELD. Did they hold that New York could, by paying damages, take the water?

Mr. RAY of New York. The opinion in the case says that the farm owners in Connecticut had practically consented and must now be content with damages.

Mr. LITTLEFIELD. That involves laches.

Mr. RAY of New York. Yes.

Mr. LITTLEFIELD. And did the court hold that New York City could have exercised the right of eminent domain and have taken the water?

Mr. RAY of New York. They plainly intimated that she could not, and if you will look at Mr. Randolph's remarks you will find the case and the statement of the court. Of course you will understand the time is limited and I have taken more than I intended to, and I promised to yield time to others.

The CHAIRMAN. The gentleman has only thirty minutes remaining.

Mr. RAY of New York. I have carefully read all the law applicable to this case. I say the bill is unjust and unfair to the farmers of the East. I say it is an unwise and improvident scheme. I say that it is a very dangerous power to put in the hands of the Secretary of the Interior, and that there will be scandal. I say that the revenues, the moneys derived from the sale of public lands, would prove insufficient to carry out this scheme, and that within three years, certainly within five years, those interested would be appealing here to Congress to appropriate money out of the public Treasury with which to carry on and complete this scheme.

I say that the bill is incapable of execution because unconstitutional. I have pointed that out. I say again that you can not condemn these rights. I say again that we have no right under the Constitution to enter on this scheme, and I invite, in that connection, your attention to the points and cases that you will find in my minority report, and I will add to my remarks the views of the minority which contain quotations and a reference to all the cases.

Some one will say that the courts of the State of California have declared that irrigation is constitutional. So it is in the State, under the sovereignty of the State, and under her constitution, and why? She has the right to pass a law, as New York

has, or any State, to clear up swamp lands for the public health, or wherever there is a mass of arid lands she may provide irrigation for them for the reasons stated in the case to which the report referred to calls special attention. The cases are different, the grounds of jurisdiction different.

Now, gentlemen who have presented this bill and spoken for it say that the President of the United States is for this bill. I do not know whether he is for this bill or not. If he is for it to-day, I do not believe he will be for it when he understands it. When the House bill was reported from the Committee on Arid Lands I read in the newspapers that the President was against the bill and that he had sent for several Senators and Representatives and declared in advance that he would not sign it. I take no stock in such reports as that. I love the President of the United States as a friend, as a patriotic citizen of the Empire State. I respect him and revere him as President of the United States, but I do not believe that the time has come when he sends for members of either House and tells them, as he sees a bill reported from a committee, "You must not pass that. If you do, I will veto it;" or You must pass that; you must do this or do that."

I do not believe it and you can not make me believe it. He may have his ideas. In his message he favored irrigation. Some one may have misled him into some sort of an indorsement of this scheme, but when it comes to the point where he understands it, and the consequences of writing it into a law, and the unconstitutional features of it, as he will, a different question will be presented.

I say to this House that I oppose this bill for the reason stated, and because I believe it to be unconstitutional. There is no gentleman in this House, or in the Senate, or in all this broad land, who would do more than I to support the Administration now dominant at the White House; that would do more to hold up the hands of the President than would I.

I am a Republican; I desire to carry out the principles declared and the promises of the Republicans made in convention, but no Republican national convention has ever indorsed this scheme. They have said they were in favor of irrigation. What they meant by that is what Republican conventions always mean, and that is, a wise law, well considered, one bringing the greatest good to the greatest number. We will do all that at the proper time, under proper conditions, and above all we will do it with reference to the rights and interests of all who dwell under the American flag, and without violating the Constitution of the United States. [Loud applause.]

Mr. Chairman, I annex the report referred to.

[House Report No. 794, Part 2, Fifty-seventh Congress, first session.]

IRRIGATION AND RECLAMATION OF ARID LANDS.

The undersigned members of the Committee on Irrigation of Arid Lands can not agree with the majority of the committee, and are opposed to the bill in its present form and also to the general scheme proposed thereby as dangerous, unfair, impossible of execution, and unconstitutional.

THE SCHEME.

The general scheme of this bill (H. R. 9676) is to take the proceeds of the disposition of all public lands in the thirteen States and three Territories named in the bill (and there is little public land belonging to the United States elsewhere), excepting only the 5 per cent thereof set aside by law for educational and other purposes, and create therewith a special fund in the Treasury which is to be known as the "Reclamation fund," and such fund is to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the States and Territories named, and for the payment of all other expenditures provided for in the act.

In case the receipts from the sale and disposal of public lands not included in this bill are insufficient to meet the requirements of existing law for the support of agricultural colleges in the States and Territories, such colleges are to be supported from moneys in the Treasury derived from other sources. Thereby education is subordinated to irrigation; intelligence to money.

The Secretary of the Interior is authorized and directed to make examinations and surveys for and to locate and construct irrigation works for the storage, diversion, and development of waters, including artesian wells: in his discretion to withdraw from public entry the lands required for the irrigation works contemplated, to let contracts for the construction of such work, and fix the charges for water rights, which are to be apportioned equitably.

When the Government has irrigated tracts of land, and the same have been sold with water rights, and a major portion of the lands irrigated has passed to private ownership, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization, etc., as may be acceptable to the Secretary of the Interior; but the title to and the management and operation of the reservoirs and of the works necessary for their protection and operation are to remain in the Government.

The bill also provides that if in acquiring water rights, building reservoirs, etc., it becomes necessary to acquire any rights or property the Secretary of the Interior is authorized to acquire the same by purchase or condemnation and to pay therefor from the reclamation fund.

The bill also provides that nothing in the act shall be construed as affecting or interfering with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, but that State and Territorial laws shall govern and control in the appropriation, use, and distribution of the waters made available by the works constructed under the provisions of the act. It is not proposed to give a free home to anyone, or to extend any benefit to a citizen of the United States, or to all similarly situated.

THE SCHEME IS UNFAIR.

The bill does not provide what particular arid lands are to be irrigated, nor does it provide for the location of the irrigation works. The whole fund may be used in and for the benefit of any one State or any one Territory. All may be used in Nevada or in New Mexico or in Arizona, and the arid lands in the other States and Territories may go entirely unbenefited by the provisions of this act.

It has been stated that the proceeds of sales of public lands during the fiscal year ending June 30, 1901, amounted to the sum of about $4,000,000, but that the average receipts are between $1,000,000 and $2,000,000 per annum.

It is clear that the receipts from the sale of public lands will not justify the construction of adequate irrigation works, canals, etc., in all the States and Territories named.

It is also clear that if the proceeds of the sales of our public lands are to be devoted to irrigation, adequate provision should be made for all the States and Territories having arid lands susceptible of irrigation,

It is manifestly unjust and unwise to take the proceeds of public lands in one State and use them for irrigation in another State.

Nor is this criticism of the bill in any respect shaken by the insertion of the "plea in mitigation," section 9, and which reads as follows:

"SEC. 9. It is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory: *Provided*, That the Secretary may temporarily use such proportion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event within each ten-year period after the passage of this act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid."

This section is a mere declaration of Congressional policy; it is not binding on the Secretary or intended to be, and was inserted to placate the opposition to the unfair provisions of the bill. It is declared to be the duty of the Secretary to expend a major portion of the proceeds of the sale of public lands in each of said States and Territories therein "so far as the same may be practicable and subject to the existence of feasible irrigation projects" therein. As the Secretary is made the creator and sole judge of the feasibility of all irrigation projects, it is not probable that he will create one in a locality not desirable to him however feasible it in fact might be or appear to others. But there is an exception to this declaration defining the duty of of the Secretary which nullifies all that goes before.

He may use the whole fund in one State or one Territory, and is to restore enough money to the other States or Territories within ten years (if he has it) to give these States or Territories the benefit of a trifle more than one-half the proceeds of its own public lands, but such declaration of duty is "subject to the conditions as to practicability and feasibility aforesaid." This provision comes out at the same hole that it entered, without accomplishing anything. In fact, it is meaningless, although it "sounds well." The sum and substance of the proposition is that the Secretary of the Interior is to expend the whole fund in his own discretion in such locality, State or Territory, as in his judgment presents practicable and feasible locations and projects. Of all this he is sole judge, jury, attorney, and executioner.

THE SCHEME IS UNWISE AND IMPROVIDENT.

It is asserted that if the proceeds of the public lands are wisely used in the construction and operation of suitable irrigation works, including reservoirs for the storage of water, artesian wells for pumping water out of the earth, and ditches and canals for conducting water from place to place, that millions of acres of unproductive land will be made fertile and opened up to settlement, thus providing homes for millions of people. It can not be doubted that millions of acres of land in the States and Territories named may be made productive by suitable irrigation works, provided an ample and continuous water supply can be obtained.

It is admitted that Nevada lacks the water necessary to make her arid and desert lands available, but it is proposed to have the General Government go into the State of California and appropriate the waters there, by purchase or condemnation, and conduct them into the State of Nevada for irrigation purposes. This part of the scheme, standing by itself, is so vast and expensive and involves so many complicated legal questions that the thoughtful man will hesitate long before seriously entertaining the proposition. California has arid lands of her own and use for all the waters within her State, both above and beneath the surface. It is not probable that this great State will ever consent or submit to have her waters, whether public or private waters, diverted to the State of Nevada. We deny that there is any power in the Government of the United States to condemn lands or water rights in one State for the use and improvement for sale of lands situate in another State, even when the lands in that other State belong to the General Government.

If the State of California should consent to part with her lands having a water supply, or should the private owners consent to part with theirs, an adequate compensation being paid, it is probable that the proceeds of the sale of our public lands would be exhausted in obtaining water rights at the very inception of the enterprise. It was suggested on the hearings had before the committee in the Fifty-sixth Congress that these arid lands should be turned over to the States, and that the States, respectively, should proceed to irrigate their own lands, constructing the works, artesian wells, reservoirs, etc., necessary for that purpose. The reply to this proposition was that States had undertaken but had abandoned these irrigation schemes because not profitable. If experience has proved that irrigation is not beneficial to the State, upon what theory will the General Government undertake a scheme so vast and expensive that the ordinary mind is staggered at its mere contemplation?

The proposition to furnish water by means of artesian wells constructed by the General Government is plausible, but does not meet our approval. Such wells are sometimes successful, but often unsuccessful. We do not believe that a sufficient supply of water for irrigation purposes on an extensive scale can be obtained by such means in any arid-land region. No one can, approximately even, correctly estimate the cost of such an enterprise. It is quite true that vast reservoirs may be constructed at or near the headwaters of large streams into which the water may be gathered and stored during the rainy season; that this water by means of ditches and canals may be carried long distances and made available at various points for irrigation purposes.

The cost of constructing, maintaining, and operating one of these reservoirs may be estimated; but any estimate will be far from the actual expense. If the Government commences the construction of such reservoirs at different points and the proceeds of sales of public lands are exhausted before they are completed and put in operation, a demand will immediately be made for an appropriation out of the public Treasury on the plea that the Government having gone into the business of irrigation and having expended millions for incompleted work such works must be preserved and completed in order to be of any value whatever. Such pleas are usually successful, but the result would be either that the Government must abandon its incomplete work or tax all the people for the benefit of a locality.

If we add millions of acres of productive land to our national possessions we shall surely diminish the value of the present farming lands throughout the Union, and we shall open new areas in the far West to compete in production with the farmers in the South, East, and middle West. The people in these sections will not consent, and ought not to consent, to pay from the public Treasury for the construction of such public works, which, even if successful, will work injury to their interests.

Our present agricultural lands are not so overcrowded or so unproductive that we need to enter on this scheme in order to feed or accommodate the people of this nation, even should the population double in the next fifty years. We are now producing and exporting millions of dollars' worth of farm products each year.

Nor should we open up these lands for the purpose of encouraging immigration. The time is at hand when immigration should be limited and discouraged rather than encouraged.

DANGEROUS POWERS GRANTED.

It is conceded that if this bill is enacted into law the Secretary of the Interior will have the absolute disposal of at least $6,000,000 now on hand, with about $3,000,000 added each year thereafter until the sale of irrigated lands commences, when the sum will be much larger.

No sane man desirous of promoting the growth and prosperity of our whole country and of making permanent our institutions of free government will consent to the placing of this immense sum of money and the power of appropriation or expenditure thereof at the disposal of any one man in times of peace. In the mad scramble for this money corruption would run riot. The Secretary of the Interior has not the time to see to the honest distribution and application of this money, and the whole matter would necessarily be left to the management of irresponsible subordinates. Civil service has been so extended that the Secretary of the Interior will be powerless to name the subordinates who will apply and expend the fund, and the Civil Service Commission is not responsible to anyone, and by the enactment of this bill Congress abrogates its power.

IT IS A RAILROAD PROJECT.

Nor is the proposition in this form inspired or approved by the people of the States and Territories in which these public lands are situate. The land-grant railroads are behind this scheme and the real beneficiaries. These roads run through these arid lands and semiarid regions, and they own vast tracts of these lands. The construction of these irrigation works and reservoirs at the public expense will inure to their benefit, for it will bring their lands into the market at twenty times their present value. In our judgment the Congress of the United States will be false to its trust if it sanctions a scheme the benefits of which are largely, at least, to be reaped by these railroad corporations.

These corporations inspire opposition to the plan of turning the public lands over to the States, leaving irrigation to State expense and State control and interstate agreement. The Secretary of the Interior is not only to expend all this money in the construction of these works without restraint, but he is to select the location and to determine their extent and character, control them when constructed, and fix the price and extent of water rights sold to settlers on what he may deem "equitable" principles.

The unwisdom of conferring all this power, of surrendering all this property, and of opening wide the doors to treasury "looting" is apparent.

IMPOSSIBLE OF EXECUTION.

In order to gain control of lands and water rights now in private ownership for the purpose of making fertile and more valuable for sale, not use, by the United States, the arid lands of the United States, it is proposed to condemn the desired lands and water rights when necessary. The theory is that un der the provisions of this bill the Government of the United States may enter a State and condemn the lands or the water rights and privileges of citizens of that State, and then divert such waters (both surface and underground waters) into vast reservoirs, into new channels, and into other States and Territories, where such waters did not before flow, for the purpose mentioned, on the theory that such diversion and application is a public use.

Even if such power of condemnation for the purpose mentioned exists in the General Government, which we most emphatically deny, it is readily seen that such a scheme involves not only the purchase or condemnation of lands and water rights, at the head of streams, but may necessitate the purchase or condemnation of every foot of soil and every water right for hundreds of miles from the source to the mouth of such streams excepting only those now owned by the Government. To absorb, confine, or divert the headwaters of a stream and use them for the irrigation of arid lands, thus depriving the owners below of the natural flow and necessary use of such waters, is a proposition so startling that we may well pause and inquire as to our constitutional power, as well as the cost of the water rights, which would run into the millions and might exhaust the fund, as is readily seen.

Every owner of a water right already appropriated, and to the full extent of the appropriation, is entitled thereto and is the owner thereof, and he can not be deprived of the same except by purchase or lawful condemnation proceedings for some public purpose on due compensation being made.

The sovereignty of the State extends to and over every foot of land within her borders, including the shores and soils under the navigable waters, and such State only can exercise the right of eminent domain over them.

The law on this subject is well stated by Pomeroy in his work on riparian rights, section 31:

"SEC. 31. *Jurisdiction of State and United States distinguished.*—It should be observed in this connection that the United States Government has no power whatever to prescribe for its grantees any general rules of law concerning the use of their lands, or of the lakes and streams to which they are adjacent, binding upon its grantees of portions of the public domain situated within a State, and becoming operative after they have acquired their titles from the Federal Government. The power to prescribe such rules, forming a part of the law concerning real property, belongs exclusively to the jurisdiction of the States. Over its public lands situate within a State the United States has only the rights of a proprietor, and not the legislative and governmental rights of a political sovereign. Even with respect to the navigable streams within a State the powers of the Federal Government are limited, and a fortiori that is so with respect to streams which are unnavigable.

"In the great case of Pollard's Lessee *v.* Hagan the authority of the United States over its public lands within a State was thus defined by the Supreme Court: 'When Alabama was admitted into the Union she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States. Nothing remained in the United States, according to the terms of the agreement, but the public lands. And if an express stipulation had been inserted in the agreement granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative, because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain within the limits of a State, except in cases in which it is expressly granted. * * * In the case of Martin *v.* Waddell the present Chief Justice, in delivering the opinion of the court, said: "When the revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution." To Alabama, then, belong the navigable waters and soils under them in controversy in this case, subject to the rights surrendered by the Constitution to the United States.' Recognizing the power of the United States over such navigable streams for the purpose of regulating commerce, the court adds: 'The right of eminent domain over the shores and the soils under the navigable waters belongs exclusively to the States within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it.' * * *

"Summing up its conclusion, the court said: 'First, the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States respectively; secondly, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States; thirdly, the right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the sale and disposition thereof conferred no power to grant to the plaintiffs the land in controversy in this case.'"

Congress has no right of eminent domain in territory purchased of France and Spain. (Pollard *v.* Hagan, 3 How., U. S., 212.)

The right of eminent domain can not be exercised within a State by the United States for a purpose not incident to some power delegated to the General Government. (Kohl *v.* United States, 91 U. S., 367; Cherokee Nation *v.* Southern Kan. R., 135 U. S., 641; United States *v.* Fox, 94 U. S., 315; Van Brocklen *v.* Tennessee, 117 U. S., 151; Shoemaker *v.* United States, 147 U. S., 282; United States *v.* Gettysburg Elec. R., 160 U. S., 668.)

In the light of the adjudicated cases the provision in the bill authorizing the condemnation of lands is plainly unconstitutional.

The State has ample power to control all waters and lands within its boundaries by the exercise of the right of eminent domain, a power the General Government does not possess except in a limited degree and for purposes of which this is not one. Not possessing the power of eminent domain for the purposes of his bill, having no power over lands heretofore conveyed by it or by the States, how is the United States to obtain possession or control of streams rising outside its lands, passing through them, and then through lands of private individuals below? May it retain and store such waters and appropriate them to its uses without the consent of the owners below? Clearly not. There are places where private ownership alternates with public ownership. How shall the Government of the United States obtain the right to cut ditches, dig canals, etc., through these lands? Irrigation may be, and is, a public purpose so far as the State and its interests are concerned, but not as to the United States. The only power it has over these waters and lands underneath is under the interstate-commerce clause of the Constitution. No one can claim that irrigation has any connection with interstate commerce.

Having under the Constitution full power over post-offices and post-roads, the United States may condemn lands for public buildings and grounds. So for military purposes may the power be exercised. But the relation of the General Government to the public lands is as mere owner, proprietor. It can not condemn the lands of private owners to promote schemes for increasing the value of public lands or promoting settlement thereon. The General Government will therefore, if this bill or any similar bill becomes a law, find itself hampered at every step, unable to carry any plan into successful operation, and will, as already stated, subject itself to claims, many of them just, involving millions of dollars, for the unlawful interference with water rights and privileges.

When a State is admitted into the Union, the sovereignty of the United States over every foot of soil in the State is at an end (unless expressly reserved), and that of the State becomes paramount. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., pp. 526-527). Thereafter the United States, as to the public lands, has only the rights of an owner, subject to the sovereignty of the State. (Same case.)

NOT A PUBLIC USE.

The use proposed by this bill is not a public use unless Congress has the constitutional power to improve the Government lands for the purpose of making them more salable, bring a higher price in the market, and in so doing is carrying out a governmental purpose and executing a power conferred by the Constitution for the benefit of all the people.

That Congress may pass laws authorizing the acquiring of lands by condemnation proceedings for a public use of the United States is not denied.

Here the use contemplated is the acquiring of lands and water rights which are to be improved and then sold again to private individuals and used for private purposes, or used for storage purposes, the property (water) collected from such water rights and stored to be sold to private individuals and corporations and all for purposes of speculation or supposed gain, not to the public Treasury, but to the State, by increasing its population, productive power, and taxable property.

There is no gain to the public Treasury, for the proceeds of sales are to go into the construction and maintenance of the irrigation works; no benefit to the United States, unless it be in the promotion of the interests and growth of a State or of a few States to the possible and probable detriment of the many.

The water and water rights condemned are not to be kept and used by the General Government, but sold again for private use. Under the guise of condemning lands and water rights for a public use, the use of the public, we, in fact, propose to condemn them for purposes of sale and appropriation to private use. The works themselves, in the main, and the control and distribution of the water is expressly made subject to State laws, and hence to State control. Private use thereof is the ultimate object, the public use being temporary and for speculative purposes.

The right of eminent domain has never been exercised by the General Government for any such purpose. It has exercised it in the following instances:

Burt *v.* Merchants' Ins. Co. (106 Mass., 356), for a post-office; Kohl *v.* United States (91 U. S., 367), for United States courts; United States *v.* Jones (109 U. S., 513), to improve water communication between the Mississippi and Lake Michigan; United States *v.* Great Falls Manuf. Co. (112 U. S., 645), for supplying Washington with water; In re League Island (1 Brewster, 524), for a navy-yard; Gilmer *v.* Line Point (18 California, 229), for a fort; Reddall *v.* Bryan (14 Maryland, 444), for waterworks for Washington; Orr *v.* Quimby (54 N. H., 590); United States *v.* Chicago (7 How., 135), for military purposes. See also Constitution, Art. I, sec. 8; Fort Leavenworth *v.* Lowe (114 U. S., 525); U. S. *v.* Gettysburg Elec. Rwy. Co. (160 U. S., 668), for marking battlefield of civil war.

The power of the General Government to exercise such right for the purpose mentioned in this act is denied by authors of recognized ability.

There is a difference between the powers of the Federal Government and the powers of a State government in acquiring land within that State by the exercise of the right of eminent domain. This difference is thus expressed in Cooley's Constitutional Limitations, sixth edition, page 645:

"As under the peculiar American system the protection and regulation of

private rights, privileges, and immunities in general belong to the State government, and those governments are expected to make provision for the conveniences and necessities which are usually provided for their citizens through the exercise of the right of eminent domain, the right itself, it would seem, must pertain to those governments also, rather than to the Government of the nation; and such has been the conclusion of the authorities.

"In the new Territories, however, where the Government of the United States exercises sovereign authority, it possesses, as incident thereto, the right of eminent domain, which it may exercise directly or through the Territorial government; but this right passes from the nation to the newly formed State whenever the latter is admitted into the Union. So far, however, as the General Government may deem it important to appropriate lands or other property for its own purposes, and to enable it to perform its functions—as must sometimes be necessary in the case of forts, light-houses, military posts or roads, and other conveniences and necessities of the Government—the General Government may still exercise the authority as well within the States and within the Territory under its exclusive jurisdiction, and its right to do so may be supported by the same reasons which support the right in any case; that is to say, the absolute necessity that the means in the Government for performing its functions and perpetuating its existence should not be liable to be controlled or defeated by the want of consent of private parties, or of any other authority."

It may be said that if such lands are made productive, hence made more beautiful, the public taste will be gratified, the people generally made more proud of their country, and that therefore the general welfare will be promoted. Says Cooley (Cooley's Constitutional Limitations, 4th ed., p. 664):

"It may be for the public benefit that all the wild lands of the State be improved and cultivated, all the lowlands drained, all the unsightly places beautified, all dilapidated buildings replaced by new, because all these things tend to give an aspect of beauty, thrift, and comfort to the country, and thereby to invite settlement, increase the value of lands, and gratify the public taste; but the common law has never sanctioned an appropriation of property based upon these considerations alone, and some further element must therefore be involved before the appropriation can be regarded as sanctioned by our constitutions.

"The reason of the case and the settled practice of free governments must be our guides in determining what is or is not to be regarded a public use, and that only can be considered such where the government is supplying its own needs or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare which, on account of their peculiar character and the difficulty—perhaps impossibility—of making provision for them otherwise, it is alike proper, useful, and needful for the Government to provide."

In Wilson *v.* The Blackbird Creek Marsh Company (2 Peters (U. S.), 245, 250, and 251), Marshall, C. J., says:

"The act of assembly by which the plaintiffs were authorized to construct their dam shows plainly that this is one of those many creeks passing through a deep, level marsh adjoining the Delaware, up which the tide flows for some distance. The value of the property on its banks must be enhanced by excluding the water from the marsh, and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the General Government, are undoubtedly within those which are reserved to the States."

It follows that the power of condemnation for such a purpose rests solely in the State.

The right of eminent domain can not lawfully be exercised unless the property taken is to remain in the possession, occupation, and enjoyment of the public or of the Government for the public use. Says Cooley (Const. Lim., p. 530, 531, 3d ed.):

"Nor could it be of importance that the public would receive incidental benefits, such as usually spring from the improvement of lands or the establishment of prosperous private enterprises. The public use implies a possession, occupation, and enjoyment of the land by the public at large, or by public agencies; and a due protection to the rights of private property will preclude the Government from seizing it in the hands of the owner and turning it over to another on vague grounds of public benefit to spring from the more profitable use to which the latter may devote it."

The proposition is reduced to this, that the United States being the owner of large tracts of arid lands, situate within certain States over which it has no rights of sovereignty, but only those of private ownership, and having the constitutional right to "dispose" of them, and being desirous of disposing of them at a profit, and being also desirous of increasing the population and prosperity of the said States, and providing homes (not free, but for pay) for and intending to sell such lands to private owners for agricultural purposes, asserts the right to enter such States and condemn the lands and water rights owned by the individual citizens of such States for the purpose of constructing reservoirs, canals, ditches, etc., in which to gather and store, and through which to convey water to its arid lands wherever situated for the purpose of irrigating them and making them more productive and consequently more salable.

In short, an individual owner (and that is the interest of the United States), for his own indirect benefit and possible profit, proposes to condemn the lands of others for his own use on the plea that, as the use to which he proposes to put the condemned lands will ultimately benefit large numbers of people in certain States, including his own and those attracted thither, such use is a public use—that is, a use for the benefit of all the people of the Union—and that the lands are, in fact, condemned for a public purpose. On such a plea the United States may pass laws to condemn the lands of one citizen to enlarge the dooryard of another, if by so doing it improves the neighborhood and attracts population and increases values.

On such a plea the United States may engage in buying and selling lands situate within a State for mere profit, and then condemn adjacent property on the grounds stated. The United States is not a dealer in real estate and has not the constitutional power to become such; it is not a real estate improvement society and has not the constitutional power to become such. The objects and purposes mentioned are not governmental objects or purposes. Nor is the principle of public use involved because the United States, the owner of such lands, is also the lawmaking body.

The Government as owner must be regarded as an individual. As well might the legislature of a State pass laws to condemn the lands of others for the improvement of the individual properties of its members as for the United States to pass laws to condemn the lands of others for the improvement merely of its own, when such improvement is for purposes of sale, not use by or for all the people.

Nor should we lose sight of the fact that if the United States may enter a State and condemn and take water rights, both above and beneath the surface (beneath by means of artesian wells), and carry such waters outside the State, it may in so doing drain and render arid and unproductive the remaining lands in the State, and the owners thereof and the State will be powerless to prevent.

For if the purpose be a public use of the United States, and it has the right of condemnation for such a purpose, then its will in such regard is superior to the power of the State, for its sovereignty whenever and wherever it exists is "supreme." (Tennessee *v.* Davis, 100 U. S., 257; Martin *v.* Hunter, 1 Wheat., 363; In re Neagle, 135 U. S., 61-62; Ex parte Siebold, 100 U. S., 571-594.)

"The United States is a Government with authority extending over the whole territory of the Union, acting upon the States and the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution * * * or withhold from it for a moment the cognizance of any subject which that instrument has committed to it."

The danger and unwisdom of conferring such power, even if it can lawfully be done, is apparent.

The irrigation and improvement of lands within a State (including the public lands of the United States) is a matter peculiarly within the jurisdiction and province of such State in the exercise of its sovereign powers, and to its will must the United States bow so far as its public lands situate therein are concerned when not held for governmental purposes, such as military reservations, post-office sites, etc. As to these it is a sovereign, but as to its public lands it is a mere owner or proprietor, as we have seen. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 526-527; Pomeroy Riparian Rights, sec. 31.)

THE BILL IS UNCONSTITUTIONAL.

Thus far we have presented only the unconstitutionality of those provi sions in the bill providing for the condemnation of lands and water rights situate within a State.

The bill is also unconstitutional because the Congress of the United States has no power to provide for the irrigation improvement of its public lands situate within a State—probably not those situate in a Territory.

As the provisions of the bill providing for irrigation within a State are not separable from those providing for irrigation within a Territory (if that may constitutionally be done), but the whole subject is embraced in general language, and the good (if any) is only separable from the bad by construction, not by striking out words, the whole bill is unconstitutional. (United States *v.* Harris, 106 U. S., 629, 637, 642; United States *v.* Reese, 92 U. S., 214; Baldwin *v.* Franks, 120 U. S., 685-686.)

"To give effect to the rule that when part of the statute is constitutional and part is unconstitutional, that which is constitutional will, if possible, be enforced, and that which is unconstitutional will be rejected, the two parts must be capable of separation, so that each can be read by itself. Limitation by construction is not separation."

The bill is unconstitutional because the improvement of public lands for sale is not a governmental purpose or an object for which the Government was established or the nation founded, nor is it incidental thereto. It is not necessary to the preservation of the Government or to the discharge of governmental functions.

Second. The Constitution confers no such power, expressly or by implication.

Third. The Constitution in express terms designedly limits the powers of Congress over our public lands to the disposition thereof and the making of needful rules and regulations respecting same.

Will anyone contend that a law of Congress providing for the survey and fencing of the public domain within a State (and where the sovereign power of the State prevails) into farms and the planting of trees and the erection of farm buildings, etc., thereon, and the payment for such improvements out of the public treasury (or from the proceeds of sales thereof) and the sale of such farms to individuals for purposes of agriculture would be constitutional? Is a nation formed or a government of its people provided for any such purpose?

The Constitution neither refers to nor expressly mentions any such power. That power exists if the constitutional power to pass this bill exists.

When the Constitution was framed and adopted the United States owned vast tracts of public lands called "territory" (sec. 3, Art. IV). As owner it might improve, or use, or rent, or sell. It could do either or all.

But in dealing with the subject the fathers of the Republic, in their wisdom, foresaw what might be attempted, to wit, perpetual Government ownership of lands and a system of governmental landlordism—feudalism—the General Government engaged in improving and renting its lands for agricultural purposes and thus holding the citizens within Government control and subjection without interest in the soil. A feudal tenure to lands without ownership is thus defined by Blackstone:

"The fundamental maxim of all feudal tenure is this: That all lands were originally granted out by the sovereign and are therefore holden of the crown."

Opposed to such a system and designing to prevent its establishment, our fathers wrote into the fundamental law of the land a provision limiting and restricting the powers of the General Government and of Congress over its own public lands, viz (section 3, Article IV, Constitution):

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

The ordinary and legal powers of the Government as an owner were expressly limited and restricted, so far as Congress is concerned, to the "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." These words were carefully selected and designedly, deliberately, and wisely used for a purpose which ought to be respected by the Congress of the United States.

The power to dispose of lands does not include as incident thereto the power to improve or even repair, and it has been universally so held. A power of attorney to sell and convey lands does not include the power to repair or to improve. We may care for them, preserve them, survey and plot them, sell off the timber, and lease the mining lands in the Territories, for this is but a disposition of the ores and metals therein, and if in so doing we incidentally improve such lands we do not violate the Constitution.

But when we enact a law the sole purpose of which is to improve and make productive arid and unproductive lands for the purpose of sale, we have departed from our constitutional right and are exercising a power impliedly denied to Congress. That power which is not expressed or necessarily implied is as positively denied to Congress as though expressly prohibited. Such powers are reserved to the States or retained by the people.

See tenth amendment to the Constitution.

Martin *v.* Hunter's Lessee (1 Wheat., 326).

Gibbons *v.* Ogden (9 Wheat., 187).

And when a power is conferred by language defining it and bounding it, that is excluded which is not in terms included.

There is no doubt in our minds that the Constitution by plain implication denies to Congress the power to provide for the general improvement of the public lands intended for sale, not use, by the Government with the object of making them more productive and consequently more marketable.

Control over interstate commerce is expressly given to Congress by the Constitution, but without any such warrant the Congress of the United States now proposes (if it enacts this bill into law) to assume control of all interstate waters above and beneath the surface, and, if not interstate in their natural flow, to make them so, so far as necessary, for the purpose of irrigating its arid lands and so making them marketable.

DANGERS OF SUCH POWER.

Under this bill the Secretary of the Interior (if provided with money enough) may divert the headwaters of the Missouri River into the State of Utah or Idaho or of Nevada. If such power of diversion for the purpose of irrigating arid lands exists, the navigability of public rivers may be seriously impaired, if not destroyed.

The supposed right and power of the Federal Government to irrigate public lands for sale will come in direct conflict with the power expressly granted by the Constitution to control and maintain interstate commerce, and which power and interest shall prevail in controlling the water rights of the Far West will depend upon a muster of forces in the Congress of the United States. If power to appropriate and control those waters for both purposes really exists, it is self-evident that no Congressional action should be taken which will or may impair the navigability of streams upon the lower waters of which great towns have sprung up, relying for their prosperity on the natural and unobstructed flow of the streams themselves and noninterference with the watersheds, springs, and small streams which feed these great waterways.

The power of the Secretary of the Interior under the provisions of this bill is not limited to the collection and retention of surplus waters. He may collect and retain the headwaters of rivers at all seasons without restraint and, while artificially watering lands now arid and unproductive, destroy thousands of farms in now fertile regions or deprive their owners in the summer season or the dry season of their water supply for farm animals and even ordinary household uses. To confer such a power on the Secretary of the Interior, if we can, is unwise and will involve the Government in endless expense and claims for damage and destroy more property by far than the value of all the irrigated lands.

THE WELFARE CLAUSE.

But it is contended that section 8 of Article I of the Constitution confers the necessary power.

"The Congress shall have power * * * to provide for the common defense and general welfare of the United States."

It is contended that any act or expenditure that adds to the productiveness and consequently to the value and salability of the public lands within a State conduces to the general welfare, and that consequently the irrigation of our arid lands at the public expense is authorized by the Constitution.

Just how the expenditure of millions of dollars of the public funds, not a penny of which is to be returned to the Treasury of the United States for the use or benefit of the people, for the improvement of the public lands will promote the general welfare is not exactly apparent. Concede for the sake of the argument that the lands will be more valuable, more desirable, more salable, and will be more speedily settled when irrigated, still it is a conceded fact that under the provisions of the bill not a penny of pecuniary profit will accrue to the people of the United States. In a pecuniary sense there is a dead loss to the people of a sum variously estimated at from one to ten billions of dollars. It may be more, but can not be less.

It is contended that eventually the money will come back to the Government; that at some time the arid lands will all be irrigated, and that the expense of construction will cease, but that the income from sales of water rights, or of rights to use water, will go on perpetually, and that by and by a fund will accumulate and be at the disposition of Congress for the benefit of all the people. This contention is overthrown by the provision of the bill which requires all proceeds of water and water rights to be paid into the reclamation fund and used for "maintenance" of the works as well as construction. All must concede that the maintenance will be as costly, nearly, as the original construction and that constant repairs will be necessary as long as irrigation is maintained. The income from use (even could the United States control such income) would fall far short of maintaining such a vast system of reservoirs and canals and ditches.

We can discover no way by which the "general welfare" of the United States is to be conserved under the operation of the provisions of this bill in a pecuniary sense. The mere addition of more productive soil, more production, more population, more consumption, more sources of taxation, etc., in certain localities and within States to that we now have and enjoy will hardly be claimed to promote the general welfare or to constitute an object for which we may tax the whole people of the nation. It may be said that if such lands are made productive, hence made more beautiful, the public taste will be gratified, the people generally made more proud of their country, and that therefore the general welfare will be promoted. Says Cooley (Cooley's Constitutional Limitations, 4th ed., p. 664):

"It may be for the public benefit that all the wild lands of the State be improved and cultivated, all the lowlands drained, all the unsightly places beautified, all dilapidated buildings replaced by new, because all these things tend to give an aspect of beauty, thrift, and comfort to the country, and thereby to invite settlement, increase the value of lands, and gratify the public taste; but the common law has never sanctioned an appropriation of property based upon these considerations alone, and some further element must therefore be involved before the appropriation can be regarded as sanctioned by our constitutions. The reason of the case and the settled practice of free governments must be our guides in determining what is or is not to be regarded a public use, and that only can be considered such where the Government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare which, on account of their peculiar character and the difficulty—perhaps impossibility—of making provision for them otherwise, it is alike proper, useful, and needful for the Government to provide."

In Wilson *v.* The Blackbird Creek Marsh Company (2 Peters (U. S.), 245, 250, and 251) Marshall, C. J., says:

"The act of assembly by which the plaintiffs were authorized to construct their dam shows plainly that this is one of those many creeks passing through a deep level marsh adjoining the Delaware, up which the tide flows for some distance. The value of the property on its banks must be enhanced by excluding the water from the marsh, and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the General Government, are undoubtedly within those which are reserved to the States."

It would seem clear from this that the power to improve lands and add to their value and beauty must be within those reserved to the States generally as to all lands within the State and not one conferred upon or surrendered to the General Government, even as to lands owned by the General Government, for the powers of Congress over same are limited, as we have seen, by the Constitution.

In Fallbrook Irrigation District *v.* Bradley (164 U. S., 112) it was held that under the constitution and laws of California (which must control) irrigation of the arid lands of California within that State authorized thereby is a public purpose. (See pp. 160, etc.) But this falls far short of intimating that the Government of the United States may constitutionally appropriate money to construct works to irrigate its arid lands situated within a State, which lands are to be irrigated for sale, not use, by the Government.

The State being the sovereign and having the inherent power to condemn lands for a public use, and the purpose being to improve the lands of all for retention and use by the people, the common and perpetual good of the State and all its people, it was properly held the law of California was valid and irrigation a public use for which property might be condemned.

CONFLICTING PROVISIONS.

Just how the provisions of this bill, if enacted into law, are to be carried into effect is a problem no member of this House can solve and one that no court can ever elucidate.

By section 6 it is provided that when the payments for a major portion of the lands irrigated from the waters of "any of the works" constructed are made, "then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby" under "such form of organization as may be acceptable to the Secretary of the Interior." "*Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government."

The water will be in the reservoirs which can not operate otherwise than through the ditches, canals, etc., connected therewith, and hence all the irrigation works, canals, ditches, etc., will be necessary for their "operation."

Thus far the management and operation of these works are given to only two different parties: First, to the owners of the land who first purchase irrigated lands, giving those who purchase later no will in the matter at all; and second, to the Government of the United States (and which Government for the purposes of this bill is reduced to the Secretary of the Interior). Whose will is to control in case of disagreement is not stated.

But section 8 now comes in and still further complicates the matter. That section says:

"SEC. 8. That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, but State and Territorial laws shall govern and control in the appropriation, use, and distribution of the waters rendered available by the works constructed under the provisions of this act: *Provided*, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right."

It is conceded on all hands that it will be utterly impracticable and usually impossible to have the reservoirs containing the water located in the same State with the land to be irrigated and some considerable portion of the irrigation works connected with and fed from such reservoirs. It is conceded that reservoirs, or at least the water supply, for irrigation in Nevada must be located in California. California by her laws will control the "appropriation" of the water, for it is in that State, and will also determine when and in what quantity the reservoirs shall discharge such water, but Nevada may control the "distribution" when such waters as California sees fit to part with arrive in that State, and also the "use" thereof.

Then again, says the bill, the right to the use of water in reservoirs owned (both water and reservoirs) by the United States, but the appropriation of which is governed by the laws of California and the distribution and use of which is governed by the laws of Nevada, "shall be appurtenant to the land irrigated" (which land is owned and controlled by citizens of the State of Nevada), and "beneficial use shall be the basis, the measure, and the limit of the right." These questions of the right to the use and of beneficial use of these stored waters must be determined by the laws of the United States, and in case of dispute by the courts of the United States, for Federal laws grant them, while by the first part of the section the control, appropriation, use, and distribution of water used in irrigation is to be governed by Territorial or State laws administered in the State or Territorial courts, as the case may be. The entryman in Nevada must look to the United States for his right to water, to California for his water, and to Nevada for his right to use and distribute it.

As to lands within a State, Congress can pass no valid law making these water rights appurtenant to the land, for this is legislation as to real estate (relating to the law of real property) situate within a State and subject to its sovereignty and any laws it sees fit to pass. (See Pomeroy on Riparian Rights, sec. 31, already quoted.) The owner of real estate, in selling it, can confer no benefits nor impose any restrictions running with and connected with the enjoyment of such land that are not subject to the laws of the State in which the land is situated, the State being sovereign.

Again, to be clear, the United States as to its public lands in a State is only an owner with the rights of private ownership, the same as those of an individual. When territory is admitted into the Union as a State, the sovereignty of the United States is surrendered to the new State and the sovereignty of the State attaches and becomes paramount as to every foot of soil, unless expressly reserved to the General Government, and subject to the right of that Government to condemn for a public use of the United States necessary to the performance of its governmental functions or to its preservation.

Hence the provision in this bill that such water rights shall be appurtenant to the land and that beneficial use shall be the basis, the measure, and the limit of the right is unquestionably unconstitutional.

The unwisdom of the Federal Government in undertaking this irrigation scheme is thus plainly demonstrated. If, in the future, the welfare of the nation demands such works and the States find themselves unable to irrigate the lands within their respective jurisdictions, the necessary power to enter States and condemn water rights and lands and bring them all under Federal control can be given by the adoption of a constitutional amendment. But present conditions are not imperative, and there is no constitutional power to enact this bill or enforce its provisions.

The expenditure of millions of dollars, the possible necessity for the expenditure of other millions, for the direct purpose of making public lands productive and marketable, and the indirect purpose of adding to the wealth and prosperity of a few of the forty-five States, is a project calling for most serious thought and careful consideration. This we have given the subject, with the result stated, and we must therefore oppose the bill reported from the committee.

GEO. W. RAY.

I concur in the opinion that there is a total want of authority in Congress to pass the bill in question, or, in fact, any bill providing for national irrigation. But if Congress had the power, and it was generally conceded that the subject of national irrigation was one worthy of the attention of Congress, it would, in my judgment, be impossible to enter upon the proposed plan, because it embraces more than one State and the Federal Government would have to enter each State upon the same terms as a private individual or corporation, entirely divested of its sovereignty, and would have no power to purchase or condemn property needed for the enterprise held by persons other than the Federal Government; would be subject to the varying laws of the differeet States; would have no right to interfere with water courses to the detriment of private ownership or the rights of the States in the same.

My judgment is not based on the narrow doctrine of the rights of the States as against the Federal Government, but upon the broad proposition that the proposed plan is entirely outside of the powers of Congress and impossible of execution.

JOHN J. JENKINS.

[Mr. TONGUE addressed the committee. See Appendix.]

Mr. TIRRELL. Mr. Chairman, allusion has been made, I think by every speaker who has preceded me, to the position of the dominant political parties of this country upon the measure now before the House. I know that some upon this floor have during this session of Congress intimated that the planks of party platforms should be followed in the breach as well as in the observance, but I am one of those who believe that the planks of the dominant political parties of our country are the crystallization of the opinions of the country upon the industrial and commercial conditions in which the people are interested; that they are not the ebullitions of embryotic statesmen or the profound deductions of some politician at the midnight hour. They are not to be disregarded. When we accepted our nominations, we accepted them agreeing to stand by them. We argued them before the people. We were elected upon the strength of them, and we pledged our constituents that we would, if possible, see enacted into law the principles which they represent.

Therefore, I say that, unless this measure, which is in accordance with the platforms of the two great political parties of the country, is either extravagant, ineffective, illegal, or unconstitutional, we are in duty bound to see to it that it is enacted into law. Therefore, before I proceed to speak upon the merits of this bill I desire to call the attention of the House to the objections which have been raised and which have more or less been referred to by those who have preceded me and which are embodied in the elaborate report of the minority of this committee. The chief of these objections is that, while the Government owns its public lands, it can only dispose of them so that all the proceeds of the sale go to the Treasury of the United States and can only be expended for general governmental purposes.

The gentleman from New York, if I understood his position distinctly, laid down the doctrine that so limited was the sovereignty of this country over its own property that it could not put a fence around its own public lands; that it could not remove a bowlder from them; that it could not cut down a tree upon them; that it could not make a road through them; that it could do nothing with them; that they must lie a Desert of Sahara for all time to come, because under the present condition of things it is absolutely impossible that they can be utilized for any general purpose by the people of the country.

Now, to see whether that is the case, I ask you to examine the report of the chairman of the Judiciary Committee and see if in that report there is one decision which substantiates the position he takes. There is no law to back it up. He makes the assertion and then he passes on to consider a different principle of law, to which I shall allude in a moment. Whereas, if the gentleman had taken the CONGRESSIONAL RECORD for last Tuesday he would have seen in that RECORD an opinion of the Attorney-General of the United States, to which I will now briefly advert, which contradicts every principle he laid down here in regard not only to the ownership of our public lands, but to their disposition. This opinion is backed up by authorities which are cited, and this opinion and these authorities go to show that the United States in its sovereign capacity has as absolute control over its public lands as any ordinary property owner under the common law. Let me call your attention to one or two sentences from that opinion as illustrating the position which I am now taking. All these statements are backed up by references to decisions of the Supreme Court of the United States.

> The term "territory" as here used is merely descriptive of the kind of property and is equivalent to the word "lands."

I call your attention, gentlemen, to this principle of law laid down by the Attorney-General:

> The Government has, with respect to its own lands, the right of an ordinary proprietor to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as any private individual may deal with his farming property.

If a private individual can not improve and irrigate his own farm, then all ideas in regard to the ownership of property are futile. Later the opinion goes on to say:

> This is so manifestly the correct doctrine that the whole question authorizes the proposition that as to the public lands within a State the Government has all the rights of an individual proprietor supplemented with the power to make and enforce its own laws for the assertion of those rights and for the disposal and full and complete management, control, and protection of its lands.

I can not on this point cite any more cases in substantiation of this principle, because my time is exceedingly limited. Therefore, I pass on to the second objection, which the minority report makes, drawn by the distinguished gentleman from New York [Mr. RAY]. The gentleman devotes four pages of his report to the citation of what he claims to be the law bearing upon this point, that this bill ought not to pass because the United States has not the power of condemnation of private property, and that private property must be condemned for the successful establishment and carrying out of these irrigation works.

Mr. RAY of New York. Will the gentleman permit me?

Mr. TIRRELL. No; my time is so limited that I can not do it. I have only twenty minutes and I have a great deal to say. I want to say to the gentleman that if he had taken the pains to look up the facts as to whether any private lands at all would have to be taken for these projects that he has taken to look up cases which do not have any bearing upon the question, he would have ascertained, as I have ascertained—from the Geological Survey—that there are over 400 sites as to which the expense has been determined, the amount of water which can be used, and what will have to be done to carry the water to the arid lands. Four hundred of those sites have now been thoroughly examined and the expense ascertained, and I am informed by those in authority, by the Geological Survey, that not one of these sites will require the condemnation of any private land for years to come, and only a few under any circumstances.

And even where private lands would have to be condemned they inform me that by a slight change and some additional expense the location can be made different and the condemnation of any private lands whatever avoided.

But does not the gentleman know, after the examination of the authorities, that it is not necessary that the United States should condemn private property in order to carry out the completion of its works? For three-quarters of a century the lands acquired by the United States were acquired by the condemnation of the States themselves and then turned over by the States to the Federal Government. The site upon which the Boston post-office has been constructed within thirty years is upon lands which were condemned by the Commonwealth of Massachusetts and then conveyed to the Federal Government. Does anyone believe, if any of this land should have to be condemned, that the State which would receive by its condemnation unbounded wealth in the future in the development of their arid lands into arable lands would hesitate for one moment to cooperate with the United States and condemn all that may be necessary?

Does the gentleman believe that if there was a strip of private property necessary to the completion of this work that it would not at once, without money and without price, be conveyed? Any combination of private owners would offer their land to the Government without any compensation whatever, because these lands as they are now held are absolutely worthless, while if the irrigation was completed it would make the contiguous lands of the property owners valuable in the future.

Let me quote from some of the authorities given in this minority report, that you may see, from the very cases selected to prove their proposition, they are not sustained:

> Cherokee Nation *v.* Southern Kansas Railroad Company (135 U. S., 656): Whatever may be the necessities or conclusions of theoretical law as to eminent domain or anything else, it must be received as a postulate of the Constitution that the Government is invested with full and complete power to execute and carry out its purposes. * * * All lands are held subject to the authority of the General Government to take them for such objects as are germane to the execution of the powers granted to it.
>
> United States *v.* Gettysburg (160 U. S., 668): Any act of Congress which plainly and directly tends to enhance the respect and love of its citizens for the institutions of his country, and to quicken and strengthen his motives to defend, and which is germane to and intimately connected with and approximate to the exercise of some one or all of the powers granted by Congress, must be valid and the proposed use come within such description. * * * The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly granted powers; any number of these powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred.
>
> Luxton *v.* River Bridge Company (U. S., 153): Whenever it becomes necessary for the accomplishment of any object within the authority of Congress to exercise the right of eminent domain and take private lands, making just compensation to the owners, Congress may do this with or without a concurrent act of the State in which the land lies.
>
> Cooley on Constitutional Limitations, 522: If the public interest can in any way be promoted by the taking of private property, it must rest in the wisdom of the legislatures whether the benefit to the public will be of sufficient importance to render it expedient for them to exercise the right of eminent domain.
>
> United States *v.* Railroad Bridge Company (6 McLain, 517) and Illinois Central Railroad Company (20 Law Reporter, 630): Held that the United States, acting through Congress, has the right of eminent domain for all purposes incidental to the exercise of the power conferred by the Constitution and such as exist by necessary implication.

There is a long array of authorities absolutely asserting that the Federal Government has the right to condemn lands wherever it may be necessary for the carrying out of any of the powers specified in the Constitution or incidental thereto, whether it be for the common defense or for the general welfare.

Without citing further from this long list of authorities, all upon one side of this question, I claim that if the gentleman rests his case upon the elaborate discussion which he has made in his report upon the condemnation of private lands for the public use, then he is resting his case upon an absolutely false ground. The last ground argued by the minority is that this use of water is not a public use, and the bill is therefore unconstitutional. This has been well answered by the gentleman from Oregon, who has raised the question of public use. If the gentleman from New York had examined the authorities thoroughly, as he ought to have done, he would have found an opinion of the

Supreme Court of the United States, asserting that the use of water is a public use, and no State west of the Mississippi has ever decided otherwise.

And I desire to quote here what Judge Hare says, one of the greatest commentators of the Constitution. He calls attention to a very interesting feature of this whole discussion, namely, that, owing to the principles of our constitutional law, it is almost impossible for the courts of the United States to decide this question, since it is primarily a question for the legislature and not for the courts. He speaks of Monroe's recantation, contained in the message above referred to, and says that it was, like that of Madison, of the earlier date—

a virtual adoption of the Hamiltonian theory, that the power of the Congress over the Treasury is in effect absolute as to the appropriation of money for any object which in their judgment will conduce to the defense of the country or promote its welfare. Such, in fact, has been the practice since the Government went into operation, and the right can scarcely be questioned in the face of a usage which will soon extend through an entire century.

Mr. MANN. Will the gentleman yield for a short question?

Mr. TIRRELL. I do not know that I can. I would state to the gentleman from Illinois I have only twenty minutes.

Mr. MANN. It may be in the line that you are stating. If 400 sites can be acquired without condemnation of private land, why not strike that feature out of the bill?

Mr. TIRRELL. I think the bill would be just as strong, if my opinion is correct, if that were stricken out as if it were in, from the information I have received from the Geological Survey.

Mr. MANN. Why not strike it out, then?

Mr. TIRRELL. Because it may be needed in time to come in a few cases, and it does not do any harm. There is ample authority of law and of fact to keep it there.

Mr. RAY of New York. Will the gentleman allow me an interruption?

Mr. TIRRELL. I must decline to yield, for I have only twenty minutes.

The CHAIRMAN. The gentleman declines to yield.

Mr. RAY of New York. I want to know if you intend——

The CHAIRMAN. The gentleman declines to yield.

Mr. RAY of New York. I am appealing to the gentleman to see whether he will yield to me.

Mr. TIRRELL. I do not propose to yield, because my time is so limited.

Mr. RAY of New York. You do not mean to misrepresent me? You do not mean to state that I said the Government had no power to condemn lands for any purpose?

Mr. TIRRELL. We will have to stand upon what the gentleman says, as reported in the RECORD, and I stand by what I understood him to say.

Mr. RAY of New York. Oh, well, I will answer the gentleman later, when he insists on misrepresenting me and does it purposely.

Mr. TIRRELL. I do not wish to be so foolish before this highly intelligent body of gentlemen here as to willfully make a misstatement.

Mr. RAY of New York. Why do you not answer it?

Mr. TIRRELL. I have not the time to do so. If water is a public use; if the Federal Government can make all necessary rules for the regulation and management of its own property; if it can provide for the common defense and general welfare, all of which is asserted in the Constitution, there is little left to argue on this ground. I advise the opposition to go back to the fundamental sources from which they drew their legal inspiration and turn to Kent's Commentaries, volume 2, page 532, and read the following:

The reason of the case and the settled practice of every government must be our guides in determining what is and what is not to be regarded as a public use, and that only can be considered such where the government is supplying its own needs or is furnishing facilities for its citizens in regard to those matters of public necessity, commerce, or welfare which, on account of their peculiar character and the difficulty, perhaps impossibility, of making provision for them otherwise, it is proper, useful, and needful for the government to provide.

BENEFITS RATHER THAN INJURES THE NEW ENGLAND FARMER.

I desire to call attention to another section of this bill, inasmuch as I believe I am the only Eastern member on the Committee on Irrigation, certainly the only one from the northeastern section of the country with the exception of the gentleman from New York.

In the early part of this session the gentleman from Pennsylvania advanced an argument against this bill to which I wish to advert. While I admire his versatility, ability, and genial qualities, I can not agree with his economic statements relative to this subject. They are not substantiated by the results of the examination of the agricultural data of either Massachusetts, Pennsylvania, or the Eastern States generally, to which he referred. He realizes, as all realize, that when the arid lands of this country are irrigated they will rival in richness and productiveness the most favored lands of ancient Egypt. Indeed he asserts that 1 acre will produce as much as 6 acres of average land in the States of the middle West.

From this he draws the gloomy conclusion that previous development of the great West has forced down the valuation of farm lands in the Eastern States 50 per cent, with a corresponding decline in farm products. He asserts that for thirty-five years the farmers have seen a decline in value year by year of the old homestead. That now, just as prosperity begins to dawn upon the Eastern farmer, this irrigated-land tyranny threatens to strike him down. Competition must be suppressed. The productive acreage of the country must be curtailed. No more farms must be given by the Government to the American farmer. Those arid plains must remain undeveloped. The Eastern farmer must be protected, until far off in the indefinite future when divisions and subdivisions of Eastern farms, developed to their best capacity, no longer afford homes or sustenance adequate to our population, we shall be forced to open up these lands by some such plan as this.

Surely, as one living in an Eastern State, surrounded by Eastern farmers, if the gentleman from Pennsylvania has correctly stated the facts, I ought to be the last one to stand here to vote for a measure which will reduce my neighbors and friends to poverty and distress.

So I had a curiosity to make an examination into the agricultural data of Massachusetts to see whether his statements were substantiated by the actual facts. I find that in Massachusetts, whose total area is 8,040 square miles, 4,917, or 61.2 per cent, are included in farms. The total number of farms in the State are 37,715. The increase of farms in the last decade in Massachusetts is 9.7 per cent. The value of farms in every county in Massachusetts increased, except in the county of Dukes, which is a small island in the Atlantic Ocean. The number of farms in 1900 exceeded the number of farms ten years ago by 3,341. The total value of live stock increased 11.2 between 1890 and 1900. The average gross income per acre for all the farm lands in the State was $10.81. There is an average ownership of 103 farms to every 100 owners. All of these farms, with the exception of a very few, report an income, and those very few are run by wealthy men for pleasure, and no income is reported from them at all.

Now, the agricultural data of Pennsylvania has not been prepared by the Census Department, and I was only able to obtain a few figures. But I find that the statement of the gentleman from Pennsylvania will hardly stand the test of examination. The value of farm products in Pennsylvania in 1899, as compared with 1889, show an increase of $24,978,432, or 20 per cent increase in value during the last ten years.

Now, lest I may be considered as having selected Eastern States making the most favorable showing, I want to call your attention to the banner State for abandoned farms, New Hampshire, as showing the trend of agricultural development in the eastern section of the country. Out of its 5,640 square miles included in farms, 1,300 are embraced in the White Mountain region, which has a rocky and unproductive soil. Indeed, it is only near the coast and river valleys that the soil is very fertile. The islands, without skillful and energetic management, can not successfully cultivate either vegetables or cereals. Since 1850 there has been a decrease in acreage under cultivation. The New Hampshire farmer realized that wheat and corn could not be raised amid rocks and bowlders in competition with the Western farmer; that he must make a readjustment of farm methods; that the intensive cultivation of small areas of the most fertile soil must supersede the general cultivation of the land; that the cultivation of cereals must be abandoned, and dairy, poultry raising, market gardening, and fruit take their place.

While this evolution has occurred, the total farm acreage in fifty years has increased only 6.4, and unimproved land has increased to a marked degree; yet the total value of farm property has increased since 1850 $19,410,073, of which over 25 per cent, or $5,634,520, must be credited to the last ten years. The value of farm products in 1899 was 54.4 greater than 1889. An examination of farm valuations in detail shows a like satisfactory comparison, demonstrating that the New Hampshire farmer, meeting the requirements of evolution in farm production the West has created, has by attention to the local demand which a rapidly increasing urban population has brought about enriched himself in fields in which no rival can compete and in which he was never more secure or indispensable.

No, the New England farmer does not confine his vision to the few acres which surround his ancestral home by the slopes of the New England hills or along the rivers where his farm is located. [Applause.]

He looks beyond the artificial boundaries which separate his from contiguous States to the fertile prairies of the West, even to the Rocky Mountains, near which the arid lands are located. He knows that the prosperity of one section of his country is reflected to every other; that every section is bound together by an

indissoluble chain, one link of which can not be weakened without imperiling the whole; that where the manufacturing interests of the East are depressed the markets for Western products are curtailed, and when the crops of the West fail our manufacturers find a limited demand for their woolens, cotton goods, boots and shoes, machinery, and implements among the Western farmers.

The great home market, first of all, must be protected in accordance with the doctrine long maintained in New England, and our whole country is that market, for our transportation charges are so low and our freight facilities so great, unhampered by taxation or restrictions, that for trade purposes every State is as one domain.

PROVIDES FOR OUR SURPLUS POPULATION.

There is another matter of inestimable importance to the New England farmer, laborer, and merchant. For years a tide of immigration, like a great billow, has been rolling in upon our shores. On an average for twenty years, yearly, nearly half a million foreigners have settled here. I append herewith the figures as furnished by the Immigration Bureau:

Number of immigrants arrived in the United States each year from 1882 to 1901, both inclusive.

Period.	Immigrants arrived.	Period.	Immigrants arrived.
Year ending June 30—		Year ending June 30—	
1882	788,992	1892	479,663
1883	603,322	1893	439,730
1884	518,592	1894	285,631
1885	395,346	1895	258,536
1886	334,203	1896	343,267
1887	490,109	1897	230,832
1888	546,889	1898	229,299
1889	444,427	1899	311,715
1890	455,302	1900	448,572
1891	560,319	1901	487,918

In 1891 487,918 immigrants settled in the United States; of this number, 148,686 had no occupation, 54,753 were farm laborers. For the first four months of this year 233,087 arrived—an increase of 51.3 per cent over the same period for 1901. The number arriving in May surpassed any previous May in our history, indicating that the number this year will exceed even the banner year of 1882. I append another table, indicating for the last four years the countries from which they came:

Countries.	1898.	1899.	1900.	1901.
Austria-Hungary, total	39,797	62,491	114,847	113,390
Belgium	695	1,101	1,196	1,579
Denmark	1,946	2,690	2,926	3,655
France	1,990	1,694	1,739	3,150
Germany	17,111	17,476	18,507	21,651
Greece	2,339	2,333	3,771	5,910
Italy, continental	58,613	77,419	100,135	135,906
Netherlands	767	1,029	1,735	2,349
Norway	4,938	6,705	9,575	12,248
Poland	4,726			
Portugal	1,717	2,054	4,232	4,165
Roumania	900	1,606	6,459	7,155
Russia and Finland	29,828	60,982	90,787	85,257
Servia, Bulgaria, and Montenegro				657
Spain	577	385	355	592
Sweden	12,398	12,797	18,650	23,331
Switzerland	1,246	1,326	1,152	2,201
Turkey in Europe	176	80	285	387
United Kingdom	38,022	45,181	48,237	45,546
Total	217,786	297,349	424,700	469,237

What becomes of this vast swarm of people, exceeding each year the population of two of the New England States, any one of the three new Territories which, by the vote of the House, we admitted to statehood, as well as many States west of the Mississippi. They are diverted to the great manufacturing States in the North Atlantic division of the country. Sixty-five per cent of them are congested into New York, Philadelphia, Chicago, Boston, and our manufacturing cities and towns. They crowd out the American wage-earner from the avocations through which he has earned his livelihood. Unaccustomed to the luxuries and content with a tithe of the necessities of life which the American laborer has enjoyed, able to exist on a portion of the wage paid to the American citizen, he has superseded him to a large degree in unskilled work, driven him from his Eastern home, sent him to the undeveloped West, and forced him to the homesteads a generous Government has given.

What shall be done in view now of the scarcity of farm lands for homesteaders in America? Can we divert this foreign population to where competition will not strangle the American wage-earner and place it where new fields await development? How are we going to do it? I remember watching the chairman of the Immigration Committee while he was waiting like "patience on a monument smiling at grief" for his bill to be brought up. It is true that we attached to that bill an educational test, which I heartily approved and voted for, but remember that a bill with such a provision has been for months slumbering at the other end of the Capitol. We have never had an immigration law that was restrictive. They have simply prohibited the landing of idiots, the insane, and those who, by physical incapacity, would be a charge upon the public. I am in favor of drastic measures on this subject, but have little hope of seeing them enacted into law. So I favor this bill, under which the intelligent, progressive, loyal, and patriotic American can have opened up for settlement lands capable of supporting 30,000,000 people and provide employment for our surplus labor until some enactment by which intelligent and assimilative immigration, not detrimental to the laboring people of this country, can be secured.

SURPLUS PRODUCTS FOR OUR ORIENTAL TRADE.

So generally have the humid public lands been entered upon that land values in sections of the West have already advanced to over $20 an acre, and it is said that 25,000 American citizens have left Wisconsin, Minnesota, and adjoining States to open up farms in Canada during the past year. While the reclamation of the arid lands protects and creates a home market, it will also furnish our surplus products for the oriental trade, whose expansion has been marvelous during the last decade. These lands are a thousand miles nearer the Pacific than they are to the Atlantic coast. Our interoceanic railroads bring them into close communication with the Pacific ports. We can form no conception without an examination of the strides our oriental trade is making. The tonnage of San Francisco in 1900 was 3,025,969, an increase in one year of 348,444 tons.

Ten years ago Seattle did not have a steamer leaving her port for the Orient. To-day there are four regular lines from that city. The wheat exports of Puget Sound have increased 5,000 per cent in twenty years and 500 per cent in ten. Its tonnage in 1900 was over 2,277,000, and the total imports and exports nearly $30,000,000. The exports to Japan have increased since 1881 from 6 to 17 per cent of the total trade of that country, and the United Kingdom, our chief rival in that trade, which supplied over 52 per cent of those imports in 1881, furnished but 20 per cent in 1901. Our exportations to that country have multiplied 240 times in this period, and we now stand second in foreign commerce there among the nations of the world. The demand for shipping facilities on the Pacific coast has swamped the resources of every transportation company.

Six new steamers will enter the Pacific coast Orient trade this year, capable of carrying 575,000 tons of freight a year. It must be remembered that the Orient can not increase its own food production to any great extent. The limit of agricultural development appears to have been reached in Japan and China. Even in Siberia, which has been supposed to be a fertile country adapted to wheat, it is found that climatic conditions are an insuperable obstacle to successful agriculture, and travelers mark upon the banks of the Amur the great stacks of American wheat and flour. Even now a famine is blighting that country, and while their mines, fisheries, and forests teem with wealth, the necessaries of life must be imported, and should be largely imported from the United States. We occupy the vantage ground. No nation is so well equipped and so accessible as our own. Study the manifest of a Pacific steamer. Observe the enormous quantity of canned goods, dried fruits, and provisions—indeed, all that the arid lands reclaimed would produce—and the problem of the disposition of a surplus or any competition even with Western farms is solved. The market is found, a market but just opening its doors to American trade, a market where hundreds of millions are buyers, to pour their gold into our country to benefit and enrich our people. The development of the country! Home building for the people!

There are in all about 60,000,000 acres of arid lands capable of reclamation, a territory as large as that of the States of Iowa and Illinois combined. It is estimated that about 20,000,000 acres will be reclaimed directly by the Government and 40,000,000 acres by private effort. These lands are distributed over 13 States and 3 Territories and extend from Canada to Mexico. On an average, it is thought that 500,000 acres can be added to our irrigated lands yearly, requiring thirty years for the completion of the work. There is no direct charge upon the Treasury, inasmuch as the cost is to be defrayed from the sale of the lands and water rights attached thereto. They are of little value now, from 20 to 40 acres being required to raise a steer, which 1 irrigated acre will be sufficient to accomplish.

This is no new and experimental project. Irrigation has been successfully undertaken for many centuries. India affords a striking illustration of its beneficent results; not the methods of

the natives, employed until a recent period, utilizing only the excess water of the rainy season, but its conservation and equable distribution in times of drought. During the British domination of one hundred and twenty years, 22 famines, caused by cessation of rain and consequent failure of crops, have desolated the country. In the Behar famine of 1873–74, 750,000 laborers were employed in relief work for nine months, 450,000 persons received gratuitous relief daily for six months, and the Government was subjected to an expense of nearly $30,000,000. In 1877, in Madras, 1,131,000 were relieved, and in 1896–97 34,000,000 were affected, and 2,200,000 daily were fed by the Government for one year. In the famine of 1900 the loss of life above the average was 1,236,855, and more than $30,000,000 were expended for personal relief.

In 1865 irrigation for the first time seems to have been attempted to meet the crisis soon to come; not formulated on the crude devices of the natives, but carried out under the administration of experts appointed for that purpose. It accomplished much, but disappointed expectations until the storage and reservoir systems contemplated by this bill were inaugurated. Then, in one famine year in one district alone, the products raised amounted to four times the value of the entire capital involved, and 800,000 immigrants from congested districts were supported on an area of irrigated land of 1,353,000 acres, besides the aid afforded to those beyond. Lord Curzon said, in his budget report of 1900:

I want to be sure that no sources of water supply or water storage are neglected in this country.

Claus Spreckels is not a name to conjure by, nor can his personality be held up for imitation, yet as a captain of industry he has given us an object lesson in irrigation. He went to Honolulu, secured the ear of King Kalakaua, and made arrangements with the planters to control their product. Sugar planting in Hawaii is very expensive; all the land has to be irrigated. He found 10,000 acres of apparently worthless sand which he leased for a trifle from the King. He dug a canal 21 miles long with 30 tunnels cut through solid rock and brought water to these lands at an expense of half a million dollars. He organized the Hawaiian Sugar and Commercial Company, whose estate on the island of Maui is the largest sugar plantation in the world. It covers 40,000 acres and has an unbroken stretch of cane fields 15 miles long and several miles wide. It is irrigated by two ditches—the one 40 miles and the other 20 miles long, and carrying between them over 100 cubic feet of water per second. From this plantation alone 60,000 tons of sugar are yearly produced.

Six million five hundred thousand acres of arid lands in this country have been brought into the market by irrigation, the larger portion in the State of California. Southern California, where irrigation prevails, is a veritable paradise, whither the great tide of American travel flows as the frosts and snows chill our Northern lands. Here under the cloudless skies, fanned by balmy winds, amid the perfume of flowers and sheltered by waving palms, the traveler lingers. But longer lingers in memory the orange groves waving around him, with their golden fruit, and the vine-clad deserts blossoming like the rose, where a few short years ago the wolf stole across the sands. So irrigation has transformed that land, and likewise will the lands this bill will reach, building up the country beyond "the dreams of avarice" in what is indeed the wealth of a nation; but better than all, in peoples and municipalities, where homes reign, and integrity, patriotism, honor, and the decalogue are inculcated in the rising generation.

And soon or late a time will come
When witnesses that now are dumb
In grateful eloquence will tell
From whom the seed here scattered fell.

[Applause.]

Mr. OLMSTED. Mr. Chairman, it is a matter of great regret to me that I find myself compelled to vote, as I feel I must, against this measure in which I find so many of my friends on this floor interested. My remarks to-day, however, will be limited to a few desultory observations upon an entirely different subject.

I have endeavored, Mr. Chairman, to not only take a lively interest in all that occurs on the floor of the House, but also to read carefully the legislative record. My labors in that regard are not quite up to date, and so it is that I have just reached page 4621, upon which I find, commencing the somewhat remarkable speech made by my friend from Washington [Mr. CUSHMAN], who I am glad to observe is now present, as he always is, attending to the wants of his constituents.

A committee engagement did not permit me to hear his speech, but I have read a great deal about it in the newspapers and have read it carefully in the RECORD. There is matter in it which calls for most serious consideration, not only from me, but from every member of this House. Some of his statements have caused me to look about to see where, under the rules and practices of the House, I and other members stand.

The gentleman asserts that no matter how meritorious a measure may be he is utterly powerless to bring any bill or measure to a vote, and that all of us are in the same predicament. He blames the rules of the House, the Committee on Rules, and the Speaker. He says: "We have adopted a set of rules in this body that are an absolute disgrace to the legislative body of any republic," and that in electing a Speaker, "We put a club in the hands of some one else to beat us to death." He has behind him, he says, "an honest but infuriated constituency," demanding that he shall secure for them certain legislation.

You have all heard the conundrum, "What is the result when an irresistible force encounters an immovable body?" The gentleman from Washington has not fully answered that, but has shown the result of getting mixed up with such conditions, for it appears from his statement that he, standing between the irristible body of his "honest but infuriated constituency" and the immovable body comprising the rules of this House, Committee on Rules, and Speaker, the impact has left him "thinner than a canceled postage stamp."

He tells us that we are all "a lot of human midgets and legislative Lilliputians," bound down by the rules and our prostrate bodies sat upon by the Speaker, who uses the Committee on Rules as a club with which to beat out our few remaining brains. He threatens us that, to use his own words, "unless there is a change in the manner in which this body is run, I will give you a life-size imitation of an incipient revolution" right here "under the Dome of the Capitol."

Now, all this is becoming very serious. If the gentleman from Washington is right in his premises, perhaps we had better join with him and start a legislative Mount Pelee eruption right here in this body that will cover with dust, ashes, and red-hot oblivion the rules of the House, the Committee on Rules, and the Speaker himself, so that he shall no longer, as the gentleman says, "bestride the narrow world like a Colossus," while we poor "human midgets and legislative Lilliputians" "walk under his huge legs and peep about to find ourselves dishonorable graves."

But if the gentleman from Washington is wrong, then let us do what we can to protect ourselves, the rules, the committee, and the Speaker from the molten lava of his inflammatory and combustible oratory.

Mr. Chairman, an old-time preacher with an old-time use of pronouns addressed his congregation thus: "I will take as my text this morning the verse of Scripture, 'For the devil he goeth about like a roaring lion seeking whom he may devour,' and I will divide my discourse into three heads: First, 'Who the devil he is;' second, 'What the devil he is roaring about,' and, third, 'Who the devil he is seeking to devour.'"

I do not mean, Mr. Chairman, to compare my genial and distinguished friend from Washington to any character mentioned in the Scriptures. It is not necessary to inquire who he is, as everybody knows him and appreciates his ability and his wit. But as he did not particularly specify, I have had some curiosity to know just what he and his "honest but infuriated constituency" were roaring about.

I find upon a hasty examination that my modest friend, who styles himself a "legislative Lilliputian," has succeeded in having passed through this House at this session the following items for the benefit of his district:

For the purchase and installation of machine tools at navy-yard at Bremerton, $50,000.

Naval station, Puget Sound, additions and extensions, $748,500.

For purchase of site for naval magazine at Puget Sound, erection of buildings, etc., $50,000.

For construction plant, naval station, Puget Sound, $75,000.

For machinery plant, Puget Sound Navy-Yard, $125,000.

For a public building at Seattle, the cost of which was originally fixed at $250,000, afterwards increased to $750,000, he has succeeded in getting $900,000 through the House.

Public building at Spokane, $60,000.

Public building at Tacoma, $60,000.

Mr. MERCER. Will the gentleman correct his statement right there? It should be $100,000 for Spokane and Tacoma each. [Laughter.]

Mr. OLMSTED. The increase was made in the Senate. I am not referring to what Senators may have done, but what the gentleman himself has accomplished right here in this House and under these rules.

Mr. MERCER. Well, he labored very hard to bring that about.

Mr. LITTLEFIELD. Was all this before or after the gentleman from Washington made his speech?

Mr. OLMSTED. I think before. [Laughter.]

Improving Olympia River, $25,000.

Improving Tacoma Harbor, $75,000.

Improving Grays Harbor, $50,000.

Improving New Whatcom Harbor, $25,000.

Improving waterway connecting Puget Sound with Lakes Union and Washington, $160,000.

Improving mouth of Columbia River, Oregon and Washington, partly in Washington, $500,000.

Improving Upper Columbia and Snake rivers, $25,250.

Improving Columbia River at Three Mile Rapids, to be paid out of former appropriation, amount not stated.

Improving Cowlitz and Lewis rivers, $9,500.

Mr. LACEY. The gentleman will allow me to ask how much the gentleman from Washington would have got if there had not been any rules? [Laughter.]

Mr. OLMSTED. I am coming to that.

Improving Puget Sound and tributaries, $15,000.

Improving Swinomish Slough, $30,000.

Improving Okanogan and Pend Orielle rivers, $10,000.

Four private pension bills, giving, respectively, $20, $25, $30, and $40 per month.

Now, Mr. Chairman, the whole State of Washington does not pay into the Federal Treasury as much revenue as the Ninth district of Pennsylvania, in which I live.

Mr. JONES of Washington. What "gentleman from Washington" is referred to as getting all these things?

Mr. OLMSTED. I am referring to the gentleman's colleague [Mr. CUSHMAN].

Mr. JONES of Washington. Did I have anything to do with it? [Laughter.]

Mr. OLMSTED. I infer not, because the gentleman's colleague said in his speech—I quote from the RECORD—

> I represent a Congressional district comprising the entire State of Washington, a Congressional district with half a million people in it.

[Laughter.]

His remarks led me to forget that there were two of you. But there is glory enough for both in the accomplishments I have stated.

Now, if one "legislative Lilliputian," or even two, bound down by the rules and sat upon by the Speaker, can accomplish all that in one session, what under heaven would a full-grown legislative giant accomplish? I tremble when I think of the condition of the Federal Treasury if the rules were unloosed, the Committee on Rules discharged, the Speaker beheaded.

Mr. LESSLER. Right behind the ears.

Mr. OLMSTED. Close behind the ears, as the gentleman suggests; his revolution successful, the Committee on Rules abolished, and the gentleman from Washington in position to call up and pass his own bills at his own pleasure.

Now, most of those appropriations were secured how? By the aid of this much-abused Committee on Rules, which took up those bills out of their order from the Union Calendar, brought them in here, sustained by the majority of the House, and put them through for the great benefit of the gentleman from Washington, his constituents, and his district. What would he have accomplished had he not been bound down by the rules and sat upon by the Speaker?

Mr. LITTLEFIELD. What is the aggregate?

Mr. OLMSTED. I can hardly stop to contemplate so large an amount. [Laughter.] Now, what is his constituency infuriated about? What more do they want? Why all this roaring? I have had occasion to look and see what bills, without referring to his colleague, the one gentleman from that district has offered. I find they are 93 in number and for the following purposes among others:

First, to establish a mint at Tacoma, $200,000; providing also for the appointment of a superintendent at $3,000 and two lesser officials at the trifling salary of $2,500 each, to be appointed by the President, presumably upon the suggestion of the author of the bill. I am told that the Secretary of the Treasury says that the mint is unnecessary, and that if it were necessary, $200,000 would not build it.

Now, further, the gentleman would like a public building at Tacoma to cost $750,000; to increase the limit of cost for the public building at Seattle to $1,000,000.

To establish light-house and fog signal at Burrows Island, Washington, $15,000.

To establish light-house and fog signal at Burrows Island, $15,000, and fog signal at Battery Point, $6,000.

To establish fog signal at Battery Point, $6,000.

To establish dwelling for keeper of fog signal at Robinson Point, $4,000.

To authorize new building at New Dungeness light station, Washington, $4,500.

Appropriating $1,500 for the expense of determining "the best available locality in Oregon or Washington at which to establish a biological station for the investigation of questions affecting aquatic life and the fishery interests of the Pacific coast, and to report thereon at the next session of Congress," when undoubtedly an appropriation will be asked for the said biological station.

To increase the limit of cost of light-house and fog signal at Browns Point, Washington, $9,200.

To establish life-saving station near Cape Flattery, Washington.

Increasing compensation of district superintendents in Life-Saving Service to $2,500 each.

Directing Secretary of Treasury to pay $415.12 to Eben Pearce, of Tacoma.

Providing for a public building at Olympia, Wash., at an expense of $200,000.

Authorizing payment of $2,062.51 to Patrick Buckley, Indian agent at Tulalip, Wash.

To establish gas buoys at five different points, at $3,000 each.

Appropriating $2,222.08 to Raymond O. Williams and $200.54 to Joseph A. Springer.

To establish light-house and fog signal at Muckateo, Wash., $2,000.

A resolution authorizing Secretary of War to cause survey to be made "for the purpose of reporting upon the probable cost and advisability of constructing a portage railway near Celilo, in the State of Washington."

A resolution authorizing Secretary of War to ascertain and report "the probable cost and advisability of dredging a single continuous channel to deep water in the Chehalis River."

To order $3,000 paid to Thomas Hayne, of Washington.

Appropriating $73,000 to Peter Larsen.

To establish a military post at Tacoma, $150,000.

Authorizing the Secretary of War to purchase the Isham shell and Tuttle's thorite, $100,000 for the patents. Whatever thorite may be, I have never heard that the Secretary of War in his report, nor the President it his message, has indicated any pressing public need for those articles, even at the trifling expense of $100,000 for the patents.

Now, after all that, and notwithstanding his own capacity in that direction, my friend wants to establish five "gas buoys" at an expense of $3,000 each, and finally introduces a bill "to promote a conference to formulate a universal language," appropriating $5,000 for the expense thereof. [Laughter.] I understand that the language is to be one in which all the members of the House may speak at the same time, each upon his own bill, which will be necessary when the rules are abolished. [Laughter.]

Now, what are any of us to gain by destroying the rules? Why, the gentleman says—I read from the RECORD:

> We need to restore this House to the great patriotic plane on which the founders of the Republic placed it, where every individual member on this floor stands upon an equal and exact plane with every other (except the Speaker, I assume, who will have no plane and no power at all). The way this House was intended to be run by the mighty men who conceived and fashioned our constitutional Government was that the members of the House were to inform the Speaker what legislation they intended to take up, and not that the Speaker should inform the members what legislation he would permit them to take up.

Well, now, let us see what "the mighty men who framed our constitutional Government" did say. In the first place, Mr. Jefferson, who ought to know something about it, says in the preface to his Manual:

> The Constitution of the United States, establishing a Legislature for the Union under certain forms, authorizes each branch of it "to determine the rules of its own proceedings." The Senate has accordingly formed some rules for its own government; but these going only to few cases, they have referred to the decision of their President, without debate and without appeal, all questions of order arising either under their own rules or where they have provided none. This places under the direction of the President a very extensive field of jurisdiction, and one which if irregularly exercised would have a powerful effect upon the proceedings and determination of the House.

And yet that is just where our friend wants to place us, without any rules, going right back to the mighty framers of the Constitution, and putting all the power in the hands of the Speaker. Why, no Speaker for half a century has had any such power as the Speakers had in those early days.

And as to the rules, Mr. Jefferson quotes approvingly Mr. Onslow, whom he styles the ablest speaker of the House of Commons, as saying that there is nothing that tends so much to put power into the hands of administration as neglect or absence of rules.

Now, did those mighty men who framed our Government leave in the hands of the individual members the right to call up their bills? Here is what Jefferson says, and he ought to know better, perhaps, than the gentleman from Washington. He says in his Manual:

> The Speaker is not precisely bound to any rules as to what bills or other matters shall be first taken up, but it is left to his own discretion, unless the House on a question decides to take up a particular subject.

That is where the mighty framers of our constitutional Government placed the matter, and that is where the gentleman from Washington [Mr. CUSHMAN] thinks he wants it put back; or rather

he did not think that was where they had left it. He had evidently never investigated. If he puts it back where they left it, he will leave it wholly in the power of the Speaker to call up any bill he pleases, unless by some united action the majority of the House calls for some other bill.

We do not leave that unbounded power and discretion in the hands of the Speaker. The present rules provide an Order of Business. Rule XXIV, page 285 of the Manual, says:

1. The daily order of business shall be as follows:
First. Prayer by the Chaplain.
Second. Reading and approval of the Journal.
Third. Correction of reference of public bills.
Fourth. Disposal of business on the Speaker's table.
Fifth. Unfinished business.
Sixth. The morning hour for the consideration of bills called up by committees.
Seventh. Motions to go into Committee of the Whole House on the state of the Union.
Eighth. Orders of the day.

Now, so far as I can determine, sifted out and boiled down, the complaint of the gentleman from Washington [Mr. CUSHMAN] is that we do not go into the Committee of the Whole House on the state of the Union for the consideration generally of bills on the Calendar often enough to suit him. Well, that is not the fault of the Speaker. We have a rule on that subject. Section 5 of Rule XXV provides that—

5. After one hour shall have been devoted to the consideration of bills called up by committees, it shall be in order, pending consideration or discussion thereof, to entertain a motion to go into Committee of the Whole House on the state of the Union, or, when authorized by a committee, to go into the Committee of the Whole House on the state of the Union to consider a particular bill, to which motion one amendment only, designating another bill, may be made; and if either motion be determined in the negative, it shall not be in order to make either motion again until the disposal of the matter under consideration or discussion.

Now, my friend has probably not been watching his opportunity, because several times other gentlemen have gotten the House into Committee of the Whole on the state of the Union during this session, notably my venerable colleague from Pennsylvania [Mr. GROW].

But there are other reasons why we do not go into committee as often as the gentleman from Washington would like, as often as I would like, as often as other members having bills upon that Calendar would like? And why is it? Why, Mr. Chairman, it is because the great appropriation bills, carrying in the aggregate nearly a billion of dollars, are privileged. It is because all revenue bills, raising revenue to run the Government, are privileged. Contested-election cases and certain other matters are, by the rules of the House, privileged.

Therefore, when the chairman of one of these committees calls up one of those bills and asks to go into Committee of the Whole House on the state of the Union it takes precedence over the motion of my friend to go into Committee of the Whole House for the consideration of his particular bill which is not privileged. And is not that right? Is it not just as important that these great appropriation bills shall be carefully considered and four or five million dollars of unnecessary appropriations lopped off here and a few more there as it is that we shall take up time in considering a two-hundred-thousand-dollar appropriation for an unnecessary mint at Tacoma or Seattle? Will not all agree that it is necessary that these bills must be privileged?

And then, again, the Committee on Rules, just as it has done to-day, brings in a rule to take up some bill in which a great body of members are interested, to take it up out of its order and consider it just as we are considering this bill, just as we considered the oleomargarine bill, the river and harbor bill, and a dozen other bills that I could mention, which are all more important than some private bill.

Therefore they take precedence and they shut us out. But is not that as it should be? If it is not right, any gentleman—even when the chairman of the Committee on Appropriations presents a privileged appropriation bill—any gentleman can raise the question of consideration, and if the majority of the House do not want to consider it, they can vote not to take it up. When my colleague from Pennsylvania [Mr. DALZELL] brought in this resolution this morning, the gentleman from Washington [Mr. CUSHMAN] or any other gentleman could have raised the question of consideration, and it could have been put aside had a majority so desired.

If the majority of the House want to take up that mint bill which he desires, to pacify his "infuriated constituency" all he would have to do, if a majority was with him, would be to refuse to consider any other bill and then, under the rule, the Speaker would be bound to recognize a motion to go into Committee of the Whole upon the Union Calendar generally. The trouble is that the majority is not with the gentleman. Is there any wrong in that? I remember that upon one occasion, just before his bill was reached, a majority of the committee determined to rise. That was not the fault of the rules nor of the Speaker nor of the Committee on Rules. If anybody was at fault it was the majority of this body, which must always have its way.

The gentleman from Washington says:

I have seen this body adjourn three and four days at a time when the Union Calendar was freighted with hopes of voiceless millions. No, sir; it does not lie in the mouth of this body or any member of it to say that it is lack of time. It is lack of inclination and not lack of time that ails this body.

Well, that is a complaint against the whole body. If it adjourns, it is not because of the rules, nor of the Speaker, nor of the Committee on Rules. It must be on account of the desire of the majority of the members to adjourn.

We can not act on every bill. If every gentleman had offered as many bills as has the gentleman from Washington there would be a grand total of 33,394. As a matter of fact more than 14,000 have been offered at this session. It would take ten years to carefully consider and fully debate all these bills, while the life of one Congress is only two years. Why, my friend has nothing to complain of.

The gentleman from Illinois, the chairman of the great Committee on Appropriations, served here for twenty years before he got through a bill for his own district; and yet my friend has got through all these appropriations in one session. He can not expect to get everything at this session. He and his colleague have done wonders already. I think that his "infuriated constituency" can not do better than keep him here the balance of his life if he is willing to serve, for no man who came before him and no one who will come after can do more than he and his colleague [Mr. JONES] have accomplished.

Mr. MANN. Is this intended to circulate in his district? [Laughter.]

Mr. OLMSTED. There is no objection. [Laughter.]

That debate is not entirely curtailed here is evidenced by the fact that the gentleman himself covered eight broad double-column pages in the RECORD, covering a wide range of topics, as witness the large-typed subheads of subjects as we find them in the RECORD. First, I find that he spoke upon the subject of the "Rules of House;" second, "Reciprocity;" next, "What William McKinley said;" then "Declarations of Republican national platforms;" then "What Blaine said." The next head is "An overproduction of sugar," and the next "An overproduction of wheat," and the next "Our duty to Cuba." Then comes "Duty to the child;" then "What we are willing to do for Cuba." The next head is "PAYNE'S reciprocity—Democratic free trade." The next head is "GROSVENOR." The next large head is "Abusing GROSVENOR." [Laughter.] And then the next head is "The beaters of tom-toms." And, finally, "The heart of Bruce." [Laughter.]

Now, there seems to be unlimited debate. Who says this is not a deliberative body? I do not find that the pages of the legislative record have decreased in number since the present rules were adopted. Some of them were adopted many, many years ago, and some of the most important in the Fifty-first Congress. A comparison of the results of legislation under the old rules and the present ones, compiled by Mr. Wakefield, our tally clerk, I find in the Calendar of March 4, 1901, the last day of the Fifty-sixth Congress. It appears that the Forty-ninth Congress, sitting three hundred and thirty days, passed 424 public acts, 1,031 private acts, and 266 joint resolutions—a total of 1,721.

The Fiftieth Congress, sitting four hundred and twelve days, passed 570 public acts, 1,257 private acts, and 269 joint resolutions, a total of 2,096. That was under the old rules. The last, or Fifty-sixth Congress, under the present rules, with our present Speaker and present Committee on Rules, sitting only one hundred and ninety-seven days, passed 443 public bills, 1,498 private acts, and 567 joint resolutions, a total of 2,498.

That is to say, the Fifty-sixth Congress, under the present rules, present Speaker, and present Committee on Rules, sitting two hundred and fifteen days less than the Fiftieth Congress, under the old rules, passed 402 more bills and joint resolutions, and sitting thirty-three days less than the Forty-ninth Congress passed 777 more bills and joint resolutions. Certainly the gentleman from Washington will gain nothing by destroying the present rules and going back to the old ones.

He makes some complaint about unanimous consents. Now, our present Speaker, when elected to that exalted position, did not lose any of his rights as an individual member of this House. When unanimous consent is asked for, he has the same right as any other member to object and thus prevent the consideration of a bill out of order.

Looking at it from another standpoint, when a number of members are pressing to be recognized to make motions for unanimous consent, as the presiding officer, he must select the one who shall be recognized. Every member has several bills for the passage of which he would like unanimous consent. We can not

all be recognized at once. There is not time in the session nor in the life of a Congress to consider all of our bills.

Looking over the RECORD I find that during the last Congress the gentleman from Washington was recognized four times to call up bills by unanimous consent. If there was any discrimination it was in his favor, not against him. He got more than the average recognition. The RECORD discloses also that during the last Congress more bills were by unanimous consent taken up out of order than at any previous Congress for many years. No rule can be framed that will make it possible for every man to have all his bills considered when the volume is so great and the life of a Congress so short.

All things being equal, the older and more experienced members of any organization or body of men have always greater influence. It has been so from the beginning of the world; in every State legislature, in every railroad board, in every school board, and in every other organization throughout the country and throughout the world. Naturally the older and more experienced members of this House, on either side, do have more power and influence than those of us who have seen shorter service.

I am not one of the older members, having been here but one term longer than the gentleman from Washington himself. It is not in my province to defend the rules of the House. I am not wedded to them. If any better ones can be suggested, let us adopt them. But the attacks upon them are always made in the plural—in the aggregate. The gentleman from Washington has not designated any particular rule that he would like changed. They are manifestly the best rules for the prompt dispatch of business that have yet been devised, and yet there may be room for improvement.

Neither am I called upon to defend the Committee on Rules. It is composed of members, of both political parties, of long service and acknowledged wisdom in legislative affairs. That the resolutions they bring in are those that meet the approval of the majority of this body is evident from the fact that they are almost invariably accepted and adopted.

I find also that there is generally little, if any, difference of opinion between the Democratic and Republican members of that committee as to what particular bill shall be taken off of the Calendar and presented for the consideration of the House. It is wholly unnecessary for me or anybody else to defend the Speaker from attack. He needs no defense. For fairness and impartiality his record is absolutely unimpeachable.

No man can truthfully say that he has ever unfairly or improperly used the power which we have placed in his hands. He merits and possesses our confidence to-day, even more fully than when we first addressed him as "Mr. Speaker." No doubt he would be glad if every member could have a chance to have all his bills considered, but he owes a greater duty to all of us than he does to any one of us, and a greater duty to the people of the United States.

Furthermore, like ourselves, he is bound by the rules. He is a splendid Speaker, able, alert, and fearless in the discharge of the duties of his great office, wielding that club of which the gentleman speaks very gently, and far more ready to pat my friend from Washington upon the back than beat him to death with it.

Let the gentleman from Washington be patient. He has already accomplished much. His honest constituency has no excuse for remaining infuriated. I implore him to withhold his threatened revolution. He has already promised not to tear down the Republican party. When he delivers his promised speech "printed on asbestos paper" and "tied to a hand grenade for safe distribution," let him deal gently with the rules, the Committee on Rules, and the Speaker. Let him bear in mind the motto which, it is said, was once suspended over the heads of the orchestra at a ball in a Western mining camp: "Don't kill the fiddlers; they are doing the best they can." [Great laughter and applause.]

Mr. SHALLENBERGER. Mr. Chairman, the extent of our country to which this legislation directly applies is limited to 13 States and 3 Territories. The lands to be actually irrigated are but a very small fractional part of the vast area of that western empire which lies beyond the Missouri River. But the influence of this legislation upon the prosperity and welfare of the Republic will be as wide as our national domain. There are several phases of this subject which are open for discussion. There is its legal or constitutional limitations, its practical application or technical side, and its business or commercial aspect.

I am myself entirely satisfied as to the constitutionality of this measure and I shall leave the discussion of that phase of the question to the members of the House who are learned in the law, as that will probably influence your judicial opinions, but I shall confine my remarks to a discussion of the commercial and business side of the matter as to how it will affect the material interests of your constituents at home, as that is what will determine your votes. And I do not criticise, but rather compliment, those members who are opposing this bill if they think that its results will be prejudicial to the interests of those who sent them here.

I have learned in my short service in this House that no matter what we may say here upon this floor, that in the cloakroom or in the public press our votes upon all questions not involving human rights are accounted for as being determined by the way in which they affect the welfare of our constituents. In its last analysis this is purely a business question, and members will vote for or against it from the standpoint of its effect upon values in their respective districts.

This is entirely an American question, and I congratulate Congress and the country that after legislating for months upon questions concerning Cubans and Filipinos—all sorts and kinds of peoples from Porto Rico to Timbuctoo—that at last we have before us a matter which comes right home to the interests of the American people themselves—a question which means more to the progress and growth of this country, to its commercial greatness and its material welfare, to its prosperity and its national glory than all the other questions that we have had before us in this Congress all summed together.

The effect and value of a development of a nation's resources by means of irrigation is perhaps better understood by almost any of the older civilized nations of Europe than by ourselves. Civilization and irrigation were born together, in the arid regions surrounding the Mediterranean Sea and amid the dry highlands of western Asia and India. Because irrigation is the most scientific form of agriculture, it required a certain degree of development in civilization before man could apply it to nature. But in America our civilization is not indigenous, but transplanted from across the seas.

The first touch of its progress was upon the humid shores of the Atlantic, and it has pressed steadily westward, always finding, until very recently, sufficient lands watered by the rains from heaven to amply supply the inborn spirit of commercial expansion and development that has ever been the dominant motive in American advancement and growth. It is only in the last decade that we have come to realize that our lands which are watered by rainfall alone are already occupied, and that from this time forward the effort of the economist and statesman must be to increase the productiveness of those lands which now form the basis of our great agricultural wealth, and, second, to make possible by irrigation the use of those that now lie barren and unproductive.

Because of a misunderstanding as to the actual conditions which surround the development of irrigation in the West, the water supply, the climatic conditions, the labor problem, the markets, the means of transportation, and the character and quality of the crops produced, there are a number of objections urged against any plan whereby the Government shall permit the Western States to practically work out their own salvation upon the irrigation question, with but a trifling expense to the General Government; for that is what this bill seeks to accomplish.

I have studied diligently to determine what is the real source of the opposition to this measure, and both from conversation with other members and from the speeches of those who have spoken upon this floor against the general principle of irrigation development in the West, such as that made by the distinguished gentleman from Pennsylvania [Mr. SIBLEY] and others, I have come to the conclusion that nearly all of it is based upon the fear of disastrous competition from the agriculturists of the irrigated country with those farmers who live in the humid regions of the Mississippi Valley and further east.

There seems to be a belief that the stoppage of the development of the West will have a tendency to raise the value of farm products in the country eastward of the Mississippi River by limiting production, and thereby also enhancing the value of Eastern farm lands. This is the modern trust idea, developed into a national agricultural movement and is the dominant motive and principle that underlies all combinations in restraint of trade, and against which we are all professing to be prodigiously opposed, from the President in his Executive Mansion at the other end of the avenue down to the commonest Congressman in this House.

Carried to its complete reduction and logical conclusion by our forefathers, this idea would have precluded the desirability of any development or expansion of our domain west of the Allegheny Mountains. This policy is narrow and sordid, and has nothing to commend it in the past experience of this country or any other nation. How much more glorious and in keeping with the experience of these United States in the past is that principle of national political economy which teaches that trade and commerce between the different portions of our great common country has been the chief factor in our continued advancement in national wealth and prosperity; that as one portion of our country develops

its possibilities of wealth and commerce all other sections of this great Republic grow with it, and as the sun and the stars have each a glory of their own, so the different portions of our great commercial empire producing those crops and commodities peculiar and profitable to itself which, all united into one great stream of American trade and commerce, have made our wealth and prosperity the wonder and the admiration of the world.

The people yet hunger for lands upon which to build, by industry and toil, free American homes for themselves and for their children. As evidence of this fact we have only to remember how Oklahoma filled up almost as if by magic when once the Government gave the homeseeker permission to enter her borders. Open up a new Indian reservation and there will be a thousand applications for every homestead. Already numbers of our best class of American citizens, our young and vigorous farmers, finding themselves unable to gain a foothold for an independent home here upon our own soil are emigrating into Manitoba, Alberta, and the Northwest Territory and are becoming subjects of Edward VII.

The development of the Western irrigated farms can never depreciate the value of Eastern farm lands, because of reasons which are founded upon facts and not upon mere suppositions or theories. First, because the areas which can ever be irrigated in the arid regions of America are very limited and are scattered in isolated valleys over an extent of country equal to more than half of the entire United States outside of Alaska. Like oases in the desert, they dot the great Rocky Mountain divide from Manitoba to Mexico and from the eastern slope of those great mountains, which are aptly termed the roof of the world, westward to the Pacific Ocean.

The demands of the country contiguous to these productive spots will always greatly more than absorb their possibilities of production. In spite of all that the irrigated country can ever raise in fruits, in grains, and grasses, the growth of the cities of the West, of her mining and live stock industries, will always make her an active and profitable market for the products of the Mississippi Valley, which is, and always will be, the granary of the American continent.

This is no idle statement, but is based upon the actual experience and known conditions existing in that country. Corn, oats, and wheat are as high priced in the Rocky Mountain regions to-day as they are east of the Allegheny Mountains, although only three hundred miles eastward of the foothills of the Rocky Mountains—in eastern Nebraska and Kansas and western Iowa and Missouri—these grains are produced cheaper than in any other place in the world.

The irrigated farms, because of the immense labor that must be put forth to irrigate and redeem them, the expense of the application of water, and the known fact that the cost of labor on an irrigated farm amounts to from three to five times that of a farm in the humid regions, precludes any possibility of the irrigated farm being anything but a high-priced farm. The labor cost alone upon some of the irrigated farms of the West and Southwest amounts to $35, and even $40, per year per acre. But very few crops can be profitably raised at such an enormous expense, and they are only profitably raised when the price of the crop is correspondingly very high.

It is absolutely impossible that any of the great staples of the farms of the Mississippi Valley, or of the South or of the East, can ever be raised by irrigation and sold successfully in competition with the farmers of the humid regions. Even at the high price which these products command in the arid regions of the West, because of their limited supply, the profits from the irrigated farms can not be compared with those of the farms of the Mississippi Valley for the same amount of labor expended.

The irrigated farm lands, being very high-priced lands, can in no wise affect the values of the lands to the eastward of them, as did the sale by the Government of the rich lands of the Mississippi Valley and the great plains beyond at $1.25 per acre affect the values of the farm lands east of the Allegheny Mountains. The great cost of labor and of the water and the quality of the soil make the intensive style of farming absolutely essential to profitable agriculture in that arid region, and would always preclude any danger to the Eastern farmers from competition with the products of irrigated farms, did not climatic conditions also absolutely forbid it.

The most sanguine irrigationist can never hope that by that means we can ever raise a sufficiency of the products peculiar to that soil to supply the home demand alone. The development of our agricultural resources in those distant regions is not with any object of finding markets for their surplus products in the Eastern States. We need it all there where it shall be grown to support our mining and mineral industries, our growing cities, and our mighty herds of live stock.

The possibilities of our future mining and mineral development and the increase of our population rest for their support upon the products of the farm. All the great cities of the Rocky Mountain country must draw their supplies of food from them, and the labor necessarily incident to the successful operation of the great mines in the mountains can only be obtained by cheapening the cost of living to a reasonable figure. The irrigated valleys will simply be great centers of agricultural activity which will sustain and make possible the growth of our live stock, mining, and lumber industries.

The danger of competition from an irrigated country to a great, rich, and fertile country like the Mississippi Valley, which receives its supply of rainfall from the free hand of nature, is absolutely chimerical and has no foundation in fact, in possibility, or in business experience. But general statements and broad comparisons of conditions only lead to superficial understanding of questions. It is only by coming into actual contact with things and learning the details of an enterprise by experience that we learn anything that is of actual value to us.

Let me illustrate: I remember that when I started eastward for this capital I waited with great interest the hour when I should enter the historical confines of the great State of Pennsylvania, because my people had settled there amid her mountains almost two hundred years ago, and I had often heard my father tell of the riches and glories of that grand old Commonwealth. I had been told by a gentleman in whom I had great confidence that in the southwest corner of that State was centralized more productive capacity and material wealth than in any other spot on earth; that there was built up that collossal fortune that has spread libraries all over these United States and has made its owner almost despair that in spite of his utmost endeavors he will yet be disgraced by dying rich, and which has finally culminated in the most stupendous industrial combination ever known to man—the United States Steel Corporation.

But when I looked out of the car window on a dreary November morning and caught my first glimpse of Pennsylvania soil and saw her bleak and barren hills, her rocky valleys, her stony farms and her rivers red from the wash of her clay and sand, I said to myself no wonder my father left this cheerless region as soon as he was able to travel alone and sought the fruitful and fertile soil of Illinois; and the thought came to me that if I were to bring a steer from the green pastures of beautiful Nebraska and turn him out to fatten upon these mountains I would never dare to look a steer in the face again. [Laughter.] But that was only my provincialism asserting itself.

I had judged the situation with a superficial eye. I was a son of the prairie, born on the level stretches of Illinois and reared on the great plains at the foothills of the Rocky Mountains, and when the train soon dashed into the limits of that great center of titanic industries and commercial activity—the city of Pittsburg—and then out and across the hills and down those historic valleys and rushing rivers where great manufacturing cities are strung one after another along her railroads like beads upon a string, I began to understand what it was that made all these seeming worthless and barren lands so valuable, and how completely dependent upon these centers of industry the rest of the people of that great Commonwealth are, and to know why she is indeed and in truth the Keystone State, second in population and wealth among all the States of the Union; and when I think that these distinguished gentlemen, who represent Pennsylvania upon this floor, would tell us that all this industrial activity, this world of wealth, this great home market has been made possible because a kindly Government has given a fostering care to her manufacturing industries, and know that her products find their chief outlet not to the East, but to the South and West, the thought comes to me that it ill beseemeth a Pennsylvania Representative to protest against legislative encouragement to Western enterprise and development.

And, Mr. Chairman, what the manufacturing cities along the water courses of Pennsylvania and the East are to that country so will the irrigated valleys and plateaus be to the mountain and plain regions of the great West and Southwest. They will be the centers of commercial activity and development, both in material wealth and in higher civilization, which will ultimately make for the advancement of that great region and the whole nation as well. [Applause.]

How narrow and petty seem all these policies of commercial foot binding and provincial isolation when once we come to know by business experience the utter folly of it all. I have said that concrete illustrations of actual facts beat all the glittering generalities in the world of rhetoric. Let me give you an illustration of something that has come under my personal observation, of something that I know of the effect of the development of a single industry in the arid regions. The people of the State where I live will get no direct benefit from this measure.

If any farmers can be hurt by competition it is the farmers of

Nebraska and Kansas, who, by reason of their proximity to the irrigated country, must be the first to feel the effect of this development. But our people live out in the West where the horizon is big. We grow grain cheaper than any people upon earth. We make pork and beef cheaper than you of the East can do. It is we who have hammered down the price of your Eastern products by our competition, but we now ask you to help us to find a marker for our surplus products to the Westward and give you the only relief that is possible to you, because in competition with your high-priced lands we can meet you and undersell you if you force us to accept no other market.

But we are on the very edge of this coming development and we already feel its touch and thrill and know what it means. But for my illustration. At the eastern base of the foothills of the Rocky Mountains flow a number of goodly streams all rolling down through the plains of Nebraska to the sea. Along these rivers in Colorado are some of the oldest and best developed irrigation systems in the United States.

Colorado is second only to California in the extent and magnitude of her irrigation development, and there we may logically look for practical examples of what irrigation will do when it is highly specialized. The early settlers along the Cache Le Poudre, the Big Thompson, and the Platte rivers, who took Horace Greeley's advice and went West, like all other immigrants from Eastern States, attempted first to raise the grains and grasses which were common in the humid States from whence they came; but experience is a great teacher, and they soon found that the soil and climate there were especially adapted to the production of the potato, and presently the reputation of the Greeley potato, which took its name from the principal colony at Greeley, Colo., named in honor of the great New York editor, was known the length and breadth of the land over wherever "spuds" were bought and sold, and all potatoes grown by irrigation in the Western country came to be known by the generic name of "Greeleys."

But the continual cropping of the Colorado farm with wheat and potatoes exhausted it as rapidly as the same treatment exhausts the lands of Pennsylvania or Virginia, and something had to be found to renew the quality of the soil or their entire industry was ruined. So these intelligent farmers turned their attention to finding some sort of clover that could be profitably grown in that country—that wonderful leguminous plant so invaluable to the farmer because it has the unique quality of storing the soil with the nitrogenous matter so essential to the growth of other plants while yet producing a valuable crop itself.

They found this plant for which they were seeking in the alfalfa clover or lucerne, now so commonly grown throughout the West and Southwest wherever irrigation is practiced. Alfalfa clover is in some ways the most wonderful forage plant which the intelligent agriculturist has yet learned to utilize in this country. Under the conditions that exist in the irrigated regions in eastern Colorado, which I am describing, this plant produces three and four crops of hay each season that is richer in protein—the flesh-forming chemical ingredient of grains and grasses—than any other forage plant of which we know.

This alfalfa made a perfect crop for the purpose of rotation and renewing the soil for the further production of potatoes and wheat, but because of its enormous productive capacity it looked for awhile as if the alfalfa would become a drug on the market because, with the great amount of open range at that time available to stock growers, the cattle yet rustled upon the buffalo grass and found sufficient rations for the style of stock growing that was then prevalent in the country. But the farmers did not feel that they could afford to grow the alfalfa only as a means of fertilizing their fields.

Some other market must be found for the hay. An enterprising farmer, who knew something about sheep and how to feed them, conceived the idea of buying up a bunch of Mexican or Colorado lambs, shipping a carload of cheap corn from Nebraska, putting the lambs into a feed lot, and feeding them upon alfalfa hay and Indian corn. In the spring, when these lambs were finished to his satisfaction, he loaded them into a car and shipped them to the city of Chicago, consigned them to a commission merchant whom he knew, who offered them for sale.

The lambs were fat and the buyer from one of the big packing houses in the city liked their looks and bought them. They killed out exceedingly well and after being well cooled in a refrigerator they were sent to one of the uptown markets, where a caterer from one of the high-priced hotels in that great city came looking for some choice spring lambs and was shown these carcasses from the far-off foothills of the Rocky Mountains.

They looked good to him, and he bought and took them to the chef of that great hotel, who served them up as roast lamb should be served, garnished with green peas, with the juices of the lean and the fat leaking all over and down its sides, and, finally, they were served upon the table, and then the hour had come when a Chicago epicure was to first experience the delights of tickling his palate with a choice morsel of an alfalfa-fed lamb; and I have searched through history and literature to find another gastronomic epoch as important as this, and I can find only one that compares with it, which is the one so graphically described by Charles Lamb in his "Dissertation upon roast pig," when Bobo, the son of Hoti, first stuck his scorched fingers in his mouth and tasted the divine essence of the roasted cracklings of a baked pig; and like the celestial youth when he tasted the pig, or Oliver Twist with his mush and milk, those who first tasted of this Colorado lamb asked for more, and so the chef sent the caterer back to the market for more lambs.

And the man in the market went back to the packing house for more of those lambs for his customer, and because in every packing house a complete record is kept of every purchase, the manager was able to ascertain the name of the commission man from whom he bought these lambs. The commission man was told to buy more of them if he could find them, and he looked in his account sales and found the name of the shipper and that the lambs came from Fort Collins, Colo., a name then unknown to fame, but now known wherever good sheep or good mutton is prized by men.

And the commission man wrote to the farmer in Colorado to ship him more sheep like his first shipment, if he had them, and he would pay him the top market price. And the farmer told his neighbors of his profitable experience, and they grew more alfalfa, and bought more lambs, and bought more corn, and fed more sheep, and shipped them to Chicago and to all the markets of the East, and made more money; and the business grew and grew until they could not find the lambs in Colorado to supply their feed lots; and they scoured the whole Rocky Mountain country over to find them; and other irrigated regions took up the lamb-feeding business, until it has affected very profitably the sheep industry of the entire nation, and I do not know how many lambs were fed in the vicinity of Fort Collins in the winter of 1901 and 1902, because I have been here at Washington and have not sought the information, but in the winter of 1900 and 1901 there were 500,000 lambs fed in the territory tributary to that town, consuming over 5,000,000 bushels of corn, purchased from the farmers of the Missouri Valley, and that is only one center of the sheep-feeding industry, which has rapidly extended from the irrigated valleys of Montana, through Wyoming, Utah, Nebraska, and Kansas, wherever alfalfa can be grown and corn be purchased at a price that is not prohibitive.

The sheep and lamb feeders of the irrigated regions of the West have sustained upon a profitable basis the sheep industry of the nation. Millions upon millions of sheep in that country were formerly grown for wool alone, but the sheep feeder has changed all that. The carcass is now more profitable than the pelt, and in spite of the fact that wool has steadily declined, the price of sheep on foot has continued to advance, and the mutton makers of the irrigated regions of the West are responsible for it all.

The sheep feeders of those regions competing against each other for the lamb crop of the mountain country, that holds two-thirds of the flocks of the entire continent, advanced the price of lambs $1 per head, and made sheep growing universally profitable throughout the West. The increasing demand for better sheep and more of them, especially for the combined mutton and wool producing breeds, made an enormous demand for the pure-bred stock from Ohio, Kentucky, Tennessee, Illinois, New York, and other Eastern States, and added millions upon millions of dollars to the value of sheep wherever they are grazed in this country. If indeed the sheep has a hoof of gold, as tradition tells, it was fittingly found by the American farmer in the irrigated valleys of the greatest gold-producing State of the Union, the State of Colorado.

And what the farmers of the irrigated region have done for the sheep growers of America they are rapidly doing for the cattle-growing industry as well. The day of the great range herds is past. The grass is so eaten off each year that the cattle can no longer rustle and live through the long winters without being fed grains or grasses that are grown and harvested by the labor of man. There is no grass left in all that great Western country that will make beef except in Montana and in portions of Wyoming and South Dakota, and the cattle and sheep men are already fighting for the control of that region like dogs over a bone.

Western ranching is rapidly becoming a feed-lot proposition. The cows and the calves must be fed during the winter or there is no profitable growth or increase. They are already consuming millions of bushels of grain bought from the farmers of the Missouri Valley, but only a tithe of what they will consume in the near future. It is the inevitable evolution of the cattle-growing business throughout the West.

Already they are competing with the Eastern markets for the corn and oats of western and central Nebraska and Kansas, and in a few years, in the natural course of development that must go

on there, if you will assist us, they will remove from competition with the Mississippi Valley the great bulk of the corn from the cheap lands west of the Missouri River that now is the most potent factor in the control of the prices of the grain markets of this country.

And the fact that the cattle must be kept in smaller herds and handled in a much more expensive manner and upon high-priced feed requires that the quality of those cattle must be greatly improved in order to make their production profitable with all this added expense, and the ranchmen of the western country have been scouring the whole eastern portion of the United States for blooded cattle to improve their herds, and have added millions of dollars of value to the herds of all those regions, and they are the very backbone and foundation of the high prices for cattle that your producers of fine stock have been receiving for the last four or five years. So much for the scarecrow of competition from irrigated lands with the older settled regions of the country.

Instead of irrigation bringing competition to you of the Mississippi Valley and eastward, it will take away from you the competition that has been the hardest for you to meet—that of the cheap but productive farms west of the Missouri River, by furnishing the people in those regions a new and better market close at home.

Make our cheap lands high priced because of making us a market farther west and you will do the one thing that will do more than all others combined to make secure the high price of your own farm lands. But so much for the Western country as a market for your agricultural products. Let us look for a moment at what these States and Territories that are asking for this legislation have done and are doing by way of providing markets for the products of your manufactories and your mines in the East, and thereby offering greatly increased opportunities for your laboring men who toil in them and who operate them.

This is a commercial age, and ours the greatest commercial nation in all the world to-day. We must have markets to maintain our supremacy or our prosperity falls. The battle of the future will not be fought by armies for conquest and empire, but rather by the peaceful emissaries of trade to control the markets of the world. The nation will not be the most powerful that has the greatest enlisted armies or the most powerful battle ships upon the seas, but the one which, because of her commercial greatness, shall control the wealth of the world.

I do not wish to inject any politics into this discussion, nor will I, but we have been reaching out after markets across the Pacific Ocean and spending many millions of dollars in the attempt to, so we profess, in some way improve the condition of the people in the Philippine Islands. No matter how we may differ upon this question in general, I think we will all agree that they do not at present seem to appreciate all the expenditure in money and in effort we are putting forth in their behalf.

I am opposed to extravagance and waste in appropriations of public funds, but I am willing to say if we must expend hundreds of millions of money, taxed from the pockets of our own people, I would rather spend it here at home in the interest of the American people to provide free homes and opportunities for American citizens than to spend it on the other side of the world upon a people who do not seem to love us, who do not love the flag, and who would never rise to defend it in its hour of peril. [Applause.]

Mr. Chairman of the Appropriations Committee, if you will give us in the West a little of the money that you spend so freely in other portions of this country and in other portions of the world as well, we will build for you broader and better and closer markets than any you can find beyond the seas. We will build up a nation of men better than any you can find upon the other side of the world, because they will be white men, men of the mountains and men of the plains, men who will buy your goods and fight your battles for you, men who can ride far and shoot straight, men who will be the foundation of this nation's prosperity and credit in time of peace and the bulwark of her honor and glory in time of war. [Applause.]

Give us the opportunities for expansion and development offered by this legislation, and it will not be necessary to compel our appreciation of these blessings by a display of military power. [Applause.]

Let me give you a few figures by way of comparison of what we have already accomplished in that Western land in providing a market for you at your very doors. The commerce of the United States, both in imports and in exports, with the Philippine Islands in 1901 amounted to $5,427,706. The entire trade of those islands with all countries, both in exports and imports, in 1901 amounted to $55,500,000. Our entire export trade with all Asia and Oceania, including China and Japan, amounted in 1901 to $87,000,000.

The surplus products of the State of Nebraska alone, products that we sold to other States in exchange for products bought from them, amounted in 1901 to $225,555,160.89, as shown by the report of our bureau of labor and industry for that year, amounting to more than double that of all of our exports to the entire Orient with its 800,000,000 people. Yet, Mr. Chairman, the State which I have the honor to represent in part upon this floor contains a population of only a little over 1,000,000 of people. One million against 800,000,000, but the 1,000,000 people are white men and American citizens, and that tells the whole story. [Applause.] And we expended 90 per cent of that surplus with the people of the other portions of this Republic in the payment for goods and the settlement of our obligations, and the 10 per cent of profit upon it we deposited in our home banks, where it was immediately redeposited in your Eastern banks, and forms to-day a portion of the basis of credit upon which you carry on your commercial transactions; so you practically receive the benefit of it all.

This nation sold to the other people of the world of her manufactured products in 1901 the enormous sum of $412,000,000 in value. The surplus products of Nebraska, Kansas, and Colorado, only three of the thirteen States that are asking for this legislation, amounted in 1901 to over $775,500,000. You sold us goods for all of that which you did not receive in settlement of our prior debts to you. The surplus products of Nebraska, Kansas, Oklahoma, Colorado, and South Dakota amounted in 1890 to almost $900,000,000 in value, and yet the entire population of those five Commonwealths was only 3,877,570 in 1900.

Where else in all the world can you find a market that is of such value to you at present or offers such possibilities in the future, and which is absolutely all your own? The question is, Is the American Congress to-day big enough and broad enough to assist us in opening up the greatest natural opportunities and advantages yet left for national development in any place in all the world?

Mr. Chairman, this question is greater than the Philippine question, greater than the Cuban question, greater than the isthmian canal question, because of its great benefits and the magnificent opportunities that shall flow from it. It means the best markets and the best homes for the best nation on earth, and all the happiness and the prosperity which shall follow in its train shall be the common heritage of the American people, and nothing can take it from them. [Applause.]

This legislation appeals to me especially, because it is in the interest of our great agricultural population—a class of people who receive little enough consideration from the American Congress. No matter how much we may boast of our manufacturing and mining wealth, the growth of our cities, and our financial greatness, yet, in the finality, the farmer is the foundation of us all.

Like Atlas of old, he bears the very business fabric of the nation upon his back, and though at times bowed down by weight of woe because of panics or disasters which others bring upon the country, yet after the storms have rolled by if we will but let the farmer get his broad shoulders underneath our commercial structure once more and give him but a moiety of profit in his business, a little of the legislative justice to which he is entitled, he will stand again erect and in his rising he will lift us all. [Loud applause.]

Mr. MONDELL. I move that the committee do now rise.

Mr. LANHAM. Mr. Chairman, just a word. In the Fifty-second Congress, ten years ago, I had the honor to be chairman of the Select Committee on Irrigation of Arid Lands in this House. There were pending before that committee numerous bills relating to irrigation, and also concerning the reclamation of arid lands. After long deliberation the committee reached the conclusion that the proper solution of this question was the cession of the arid lands to the different States and Territories in which they were situated. Accordingly we reported a bill to that effect. I wish, as a part of my remarks and by way of my contribution to this debate, to reproduce in the RECORD the report then submitted and the bill then proposed.

The report and bill are as follows:

The Select Committee on Irrigation of Arid Lands in the United States, to whom was referred the bill (H. R. 6790) for the reclamation of the arid lands of the United States, and for other purposes, report the same to the House and recommend its passage.

Sundry bills, resolutions, memorials, and petitions have been referred to this committee during the present Congress relating to the subject of irrigation and the proper disposition of arid lands, the general trend of which has been favorable to the proposition of relegating these lands and the problems involved to State and Territorial control and administration.

The greater number of them has been of a general character, while others have been of local application, but all have been marked with the same distinct feature and uniform object, discovering a noticeable concurrence of opinion upon a subject-matter of vast public importance.

The vacant public domain of the United States, exclusive of Alaska, the Cherokee Strip (not yet opened to settlement), and certain other lands now claimed by Indians, is estimated by the report of the Commissioner of the General Land Office at 579,664,683 acres, surveyed and unsurveyed, in approximately equal proportions. The principal amount of this land is situated within what is known as the arid region, embracing the greater portion of the territory west of the ninety-seventh meridian of longitude, and contained

chiefly within the boundaries of the States and Territories named in the bill to which, respectively, it is proposed that cession shall be made by the United States.

According to the estimates of Government officials the arid region, including the semiarid plains, embraces 1,340,000 square miles. Of this about one-fourth lies in the Great Plains region east of the Rocky Mountain, which is principally arable land; another fourth is embraced in the Rocky Mountain belt, not more than one-third of which is arable; three-eighths lies in the Great Basin and Plateau region between the Rocky Mountains and Sierra Nevada, about one-half of which is arable; while the remaining one-eighth is embraced in ranges of the Sierras, and is in the main rocky and unsusceptible of cultivation. It is estimated that about one-fourth of the arid region is composed of rocky or mountainous nonarable land.

Major Powell, Director of the Geological Survey, has expressed the opinion that 100,000,000 acres of this arid region can be redeemed by irrigation through the utilization of stream waters.

Mr. Newell, as shown in Census bulletins, estimates that 70,000 acres of land are now irrigated in the semihumid plains region, and that about 4,000,000 acres are irrigated in the arid region proper. It can not be stated with accuracy what amount of irrigable lands yet remain unreclaimed.

The greater portion of the land proposed by the bill to be ceded is in its present condition of little practical value, but is capable of being appreciated beyond computation by processes of irrigation; but to accomplish its reclamation and successful development will require long time, careful treatment, and great expenditure of money. It is now comparatively an arid waste, forbidding to the home seeker, though fraught with untold possibilities. This land, urged by the necessities of our mighty civilization—the demands of our large and constantly increasing population for homes—the necessary development of its latent, though incalculable resources, cries out for redemption from its now unprofitable condition.

It is not in keeping with the progress of the age, the growth and dignity of our country, and the wants of our people that it should remain in its present unproductive condition. It must be rendered habitable. It can not, and ought not to, remain a perpetual wilderness and destitute of useful results. Either the United States must sooner or later accomplish its reclamation by direct appropriations from the Federal Treasury, by the construction and maintenance of irrigation works and the operation of the multiplied and manifold agencies for its development, or, failing so to do, it must leave it to the States and Territories within which it is embraced, in their own way to work out that salvation which is possible.

If the Federal Government is to do this work it may well take notice that the ultimate demands upon its Treasury will be enormous, far beyond any present accurate calculation, but certainly at an expense far in excess of anything it has yet encountered for any specific object of internal improvement, reaching even billions of dollars. Nor can the point be overlooked and ignored that if the National Government shall undertake the execution of this immense enterprise it must perform that function in an impartial and comprehensive manner; it can not afford to lavish its expenditures on any favored locality, but it will be constrained, in all fairness and propriety, to treat the distinct, special, and local problems of reclamation in a suitable way wherever they may arise, as well in one State or Territory as another.

To do all that will be expected of it, and that the exigencies will require, will be simply impossible of accomplishment. Nor is it believed that the taxpayers of the country remote from the arid region will be induced to consent to the outlay necessary for such a purpose. When the magnitude and far-reaching consequences of such a proposition are considered and understood in all their phases, it is reasonable to assume that thoughtful, prudent, and economic men will conclude that the General Government, essaying this object, has a work upon its hands from which it may well pray deliverance, if that deliverance can be had in a manner consistent with sound public policy, just to the whole people, advantageous to the people most directly concerned, and upon their voluntary acceptance of the burden and assumption of the responsibility involved.

If the General Government, with full knowledge of the colossal undertaking, will covenant with our Western people to go ahead with the enterprise, and prosecute the same to a successful conclusion, no serious objection is likely to be interposed by the States and Territories in the arid region. The immediate beneficiaries of such bounty would doubtless enter no protest. But the people of those States and Territories, recognizing the prevailing sentiment and realizing fully all the difficulties which encompass the situation, have reached the conclusion that the General Government will never do this work. They despair of any such prospect.

It would prolong this report too much to attempt an elaborate and detailed review of all the National Government has already done, the labor and money it has expended, the investigations it has conducted, the explorations it has made, the reconnoissances it has projected, the differentiations of irrigable lands it has disclosed, and the useful information and scientific data it has furnished in relation to the subject of irrigation and the reclamation of arid lands.

It has maintained bureaus. It has employed experts. It has made surveys, topographic and hydrographic. It has measured rainfall. It has gauged streams. It has defined catchment and drainage areas. It has located reservoir sites. It has investigated storm waters and their utilization, torrential flows and their conservation, the waters upon the earth and the waters under the earth, conditions of climate, the best methods of cultivating the soil by irrigation, and the agricultural results and possibilities which follow. It has even bombarded the skies and sought through explosives to wring waters from the reluctant clouds.

It has experimented in every field and quarter where any promise was offered for valuable result. It has sent out special and select committees, who have visited and examined the uttermost parts of the country in search of useful knowledge as the basis of appropriate legislation; it has created and organized committees in both Houses of Congress, which have spent months of time in hearing and yet longer periods in deliberations; it has furnished exhaustive reports, compilations, statistics, and suggestions; it has printed books, published volumes containing information, foreign and domestic, and issued instructive maps; it has invested all sources of research; it has reserved from settlement certain irrigable lands, and then again it has reopened the lands to occupancy which it had formerly segregated; it has experimented in legislation, as well as scientific examination, until it would seem that the era of education is completed and that the processes of national instruction may be discontinued without serious detriment to the Government.

It is not intended to underrate the importance and value of the great body of the work done by the Government in this connection; on the contrary, it must be conceded that much of it has been exceedingly useful and will be beneficially appropriated in the future. It has served to initiate careful inquiry and has apprised the people of what has been and may be accomplished in this and other countries. It has stimulated them by the wonderful solicitations to development and rewards to investment of effort and capital which it has discovered.

Why should the Government desire to longer retain proprietorship of this arid region? Why, for that matter, should it now have a vast domain of unappropriated public land? It only holds lands as a trustee and until they can be suitably settled and occupied, and is presumptively interested only to the extent that actual bona fide settlers may be accommodated. It is not supposed that it wants to retain them in order that they may be donated to corporations or given away as subsidies. Enough of that has already been done. Its administration of the land system in the past has not escaped severe censure.

The most valuable and desirable part of the public lands has long since been disposed of, and the time has come when the inducements to actual settlers upon the remaining portion must be supplemented by such development as will render it desirable for homes.

It must be tickled with water before it will smile in fertility and attraction to the homesteader, and yet the Government wants it to be occupied. The moment any settler perfects title to his homestead the Government cheerfully makes its transfer, and that settler becomes a citizen of the State wherein his land is situate, adding his taxable values to the State and his contributions to its material prosperity, maintaining his dual citizenship of the State and the United States. If the Government retains public lands for actual settlers, it is but a delusion, unless those lands are put in such condition as to make settlement possible. Having parted with its best lands, shall it continue to hold the refuse, when it is apparent there will be but few, if any, takers?

Is it economical for the Government to continue the administration of the arid lands and support the expensive machinery and supervision therewith connected in consideration of the proceeds derived from the sales of such lands for homestead purposes? Is not the outgo greater than the income from the standpoint of actual settlement? There is not likely to be any material diminution in the cost of such administration, while there is a comparative present exhaustion and will be a continued future limitation of lands available for actual occupancy, and must be a corresponding decrease of the amounts of money received from the sales of such lands.

It would seem that the Government is now engaged in a losing business from this point of view and that such loss will continually enlarge and grow more serious by pursuing the existing policy, until all the supposed heritage in these lands will have been absorbed and consumed by the cost of their administration. In this view of the case it would appear advisable for the General Government to relieve itself of the embarrassment under which it labors, if it can find some competent authority willing to assume the responsibility and to which the matter can be legitimately committed.

Attention is invited to that portion of the last Report of the Commissioner of the Land Office under the title of "The irrigation of the public lands," and especially to the following recommendation:

"A wiser plan, it seems to me, would be the transfer of the land and water to the direct control of the States, subject to such limitations and restrictions as would insure the reclamation of the land by the States and the transfer of title from the State in the first instance to actual settlers in quantity not exceeding, say, 160 acres of land to each settler."

Notice is also directed to his statement in the same connection in relation to the previous granting of "swamp lands" by the General Government and the unsatisfactory experience which ensued, as a sufficient argument in response to the alleged danger of the policy involved in the cession contemplated by the provisions of the bill now reported.

After a careful review of the whole question, we have arrived at the conclusion that the General Government will be benefited—that it will gain rather than lose by the proposed cession; that it will gain in the speedy reclamation of and settlement upon these lands; that it will gain in the acquisition and increase of a strong and self-supporting Western population; that it will be benefited in the opportunity that will be afforded for an outlet for its present and prospective millions of landless and homeless people, who now crowd, and will in future overflow, its dense and more populous Eastern States; that additions to popular well-being and prosperity will ensue; that fresh stimulus will be given to the States and Territories immediately interested to earnest endeavor for their own development; that local self-government, in all the problems involved, will assert its forces; that civilization will be advanced; that rich, waving fields and comfortable homes will make glad the solitary places which now abound in this dormant and unproductive region.

What will, what can the Government lose? What citizen, what State will begrudge their proportionate contribution of the heritage remaining in this fragment of the public domain to the people who are to redeem it? What sacrifice to either will be involved in surrendering these now barren wastes and hills and mountains? They will not go to aliens, but to our own people. It is worthy of notice that no serious protests from any Eastern State against the objects sought to be accomplished by this bill have found their way to your committee, notwithstanding the long time they have had the subject under consideration, and the public notice which has been given concerning the character of the measures upon which they have been deliberating.

We have been forcibly impressed with the conviction that suitable legislation upon this subject is imperatively demanded and can not well be longer postponed. Our conclusion is that the only solution of the question will be found in ceding these lands to the States and Territories. That this policy will ultimately prevail we confidently predict.

Can the States and Territories administer the trust which it is proposed to commit to their hands? Will they do so wisely and well? It is not contemplated that the burden shall be forced upon them. Their voluntary acceptance must precede the actual cession. It will be left to them, in their own sovereign capacity, to determine for themselves as to whether they will receive the grant.

We are led to believe that they will accept, with the conditions and reservations defined and stipulated. The Western people, almost with one accord, have united in asking this cession; they have signified their purpose and desire through legislative memorials; through the expression of large and representative conventions; through the resolutions of the great irrigation congress held at Salt Lake City in last September, composed of delegates from ten States and two Territories, and through numerous petitions from different parts of the country. That they are in earnest about the matter there seems to be no room for doubt.

A sufficient answer to the inquiry as to the ability and competency of the States to deal with this question is the fact that they are States, clothed with all the paraphernalia of statehood, invested with the power and charged with the responsibility of conducting their own affairs and conserving the liberties, property, and happiness of their people. If they can not be safely trusted in all that concerns the well-being of their citizens within the sphere of State legislation, then their existence as States is a blunder and a reproach and they ought to be remitted to mere dependencies upon the Federal Government. They are presumed to be intimately conversant with their own immediate necessities and conditions, and confidence must be reposed in the virtue and intelligence of their people.

If their legislatures are accessible to corrupt compassings, the responsibility will rest upon the people who choose them. If the voters of a State can make a wise selection in the case of a member of Congress, no reason is perceived why they can not exercise the same judgment in the election of a State legislator. Western men, as a rule, reflect as high types of real manhood, in all its better elements, as adorn American character in any quarter of the Union. They are heroic, patriotic, energetic, and self-reliant, and can

be depended upon for the performance of all the duties and obligations which devolve upon them.

If an illustration be required of the capacity of a State to administer its land system without supervision or interference upon the part of the General Government, the State of Texas, with its immense area, will furnish an instructive example. It has held out its own encouragement to immigration; it has invited capital in its own way; it has granted its lands at its own pleasure, both in preemptions in aid of education and for internal improvement; it has issued its own patents and exercised, without restraint, its own judgment in the disposition of its public domain.

It is content with its own management and would revolt at interference. It retained its lands when it entered the Union, without limitation or restriction upon its powers of administration and disposition. It is proud in its sovereignty of the soil and has demonstrated its ability to regulate its own affairs and execute its own land policies. It may be well argued that, with all the experience of the past and the benefits to be derived from the many lessons which that experience will afford, the States to which the cession may be made will prove themselves equal to the task they undertake. There is no apparent hazard in allowing them to make the experiment.

The objection which may be urged against the cession to the Territories before they are admitted as States of the Union, the doubt that the people would act wisely in the discharge of the trust, that the legislation on the subject might be reckless, and thus defeat the object to be attained, is largely met by pointing to the success which has attended the irrigation and reclamation of arid lands in the Territory of Utah. Irrigation in the United States by white men began in Utah in 1847, and has proved a most gratifying success under wise and conservative legislation, based largely upon actual experience. The waters have been so distributed and utilized by the settlers as to produce the very best results. Considering the scarcity of water and the vast area irrigated, there have been comparatively few conflicts over water rights.

The showing in the recent United States census of agricultural development gives a fair conception of what has been accomplished in that Territory. Crops were raised by irrigation in the census year ending June 30, 1890, on 263,473 acres, or 411.68 square miles, a trifle over five-tenths of 1 per cent of the entire area of the Territory. The aggregate number of farms was 10,757, and of these 9,724, or about nine-tenths, depended on irrigation, the remaining tenth being either stock ranches or farms in the northern end of the Territory, where the climate is less arid, or situated so high on the mountain sides that crops can be raised by what is known as "dry farming."

The irrigated farms in Utah are small, averaging from 20 to 30 acres each. It has not been the policy of the people of Utah to encourage the acquisition of large bodies of land, and the monopoly of water has been impossible. The laws were made to encourage and protect the settlers. The small holder had an equal opportunity for his proportionate share of water with the large holder. "The greatest good to the greatest number" is the prevailing idea and has always been strictly enforced. Water rights are considered sacred, and no theft is regarded more despicable than the theft of water in the irrigating season; no misdemeanor is more quickly or severely punished.

A people who in the past, under the most adverse circumstances, have done so much to reclaim the arid lands, who have turned what had been considered deserts into fruitful fields, may be trusted to manage the arid lands within their borders; besides the power will still remain in Congress to disapprove any legislation which the Territories may enact. These considerations would seem to remove any serious apprehensions in regard to making cession to the Territories. It has not been thought advisable to impose too many restrictions upon freedom of action by the States and Territories which may accept the provisions of the bill; all necessary power and discretion ought to be left with them.

The quantum of land that may be disposed of to any person, corporation, or association is limited to 160 acres. This, it was believed, would have the effect of preventing monopolies and syndicates from securing possession of large bodies of these lands to the detriment of the rest of the people, and might serve as a restraint upon rash legislation in this respect should the same be attempted.

The mineral lands are reserved to the United States. These lands have not been distinctively classified, and the special localities where minerals may exist can not be satisfactorily designated, but must be left in a great measure to the discoveries of prospectors. From the nature of the case it is impossible to specify the extent of these lands. They are usually found in mountainous localities unsuited to agriculture. It is not believed that material confusion and conflicts of jurisdiction are likly to arise in consequence of this reservation. Some advantage may result by the General Government's maintaining a uniform system of mining laws, applicable alike to all the States and Territories.

The forests and timbered lands are included in the cession. The following extract from the memorial of the Salt Lake City irrigation congress is a strong statement of the relation of the forests to the subject of irrigation, and presents, in brief, cogent reasons for embracing these lands in the grant:

"No mention is made in the resolutions of the congress of the preservation of the forests, but the subject is too intimately associated with that of irrigation to be divorced. The coniferous trees, such as constitute the timber growth on the mountain and elevated plateaus of the West, are exceedingly inflammable, and when once fire is communicated to them a vast destruction of values ensues. The loss from this cause, measured by the stumpage value of the timber alone, may be estimated without extravagance at $100,000,000 per year. The Federal Goverment has made some efforts to arrest this destruction, but wholly without success.

"It is from the States, or local agencies created by the States, that protection must be sought. To the settlers the preservation of the forests is a matter of grave importance. They are dependent upon them for fuel, fencing, and building materials; but this is by no means the limit of their interest. The forests on the mountain tops are the chief conservators of the waters that are to irrigate the valleys below. With their destruction the reclamation of the arid land ceases to be a problem and becomes an impossibility. An efficient and just system of preserving the forests from destruction by fire and applying them under proper restrictions to the use of settlers can not be otherwise provided and administered than by the States."

These are not the only reasons which support the proposition, but are deemed sufficient for the purpose of this report and to serve as a basis for more extended future discussion.

The committee, in their deliberations, have not overlooked the difficulties in the matter of interstate waters—the possible exhaustion, for irrigation purposes, of the waters of streams rising in and flowing through and from one State to another State or Territory before they reach the boundary line which divides them. They have realized the trouble involved in equitable distribution and prior appropriation of such stream waters, as well as the conflicting interests which may arise. Illustrations and object lessons in this connection, both of an interstate and international character, have not been wanting. These difficulties and conflicts, in the opinion of the committee, can not be removed nor obviated in any satisfactory manner by legislative enactment.

One State may possess natural advantages as to water and otherwise, which have not been provided for its adjoining neighbor, nor can the fortunate possessor of such natural advantages be debarred from the reasonable and necessary enjoyment which they afford. No legislation can equalize these conditions; nor is it probable that one State, knowing its natural advantages, would enter into any agreement with its less-favored neighbors which might involve the surrender or diminution of its existing superior conditions. Voluntary arbitration of differences are improbable, and appointive commissions could not adjust the inequalities.

There are periods of scarcity of water in these interstate streams, as well as flood times, attributable to natural causes. In the one case, the supply is wholly inadequate to the necessities of any considerable number of settlers upon their courses, even near the sources; in the other case, there is such a superabundance as to be even dangerous and destructive in localities remote from the sources. Statutes can not regulate these conditions, nor can interstate agreements control them. It will require more work and greater expenditure upon the part of some of the States and Territories than others to conserve and utilize the waters necessary for irrigation. More artificial agencies, such as constructing reservoirs, impounding storm waters, building dams, restraining and diverting torrential flows, and boring artesian wells, will have to be employed by one State or Territory than another, dependent upon its peculiar situation and environments.

Irrigation conveys the idea of supplementing and relieving natural wants by artificial means. The less favor nature has extended any given State or locality in affording it permanent water supply, the greater will be the burden to be overcome and the more exertion and expense will be required to cure the defect. Each State and Territory affected by the bill will, it is believed, better understand and more thoroughly appreciate its own peculiar condition and the specific problems which require solution, than it will be possible for Congress to do, and when it accepts the cession proposed it will do so with full knowledge of the responsibility assumed; it will take the grant cum onere, and upon its wise administration of the power conferred will depend its own prosperity and future success.

The lands which will be ceded if the bill becomes a law and its provisions are accepted by all the States and Territories therein named will amount to 558,141,374 acres, less whatever number of acres may have been taken up since the estimate in the report of the Commissioner, dated September 23, 1891, and deducting also the mineral lands, which, for the reasons before stated, can not be differentiated nor their extent determined, and are distributed as follows:

	Acres.
Arizona	55,061,005
California	52,299,499
Colorado	42,167,080
Idaho	33,781,851
Kansas	799,078
Montana	74,872,769
Nebraska	11,490,436
New Mexico	54,893,679
Nevada	53,689,524
North Dakota	16,135,440
Oklahoma	3,502,406
Oregon	39,220,151
South Dakota	14,085,394
Utah	35,428,987
Washington	20,401,691
Wyoming	50,842,434

It is deemed unnecessary to attempt any further analysis of the bill at this time. It is here subjoined for examination in connection with this report.

"*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That, subject to all rights, inchoate or perfected thereto, all the lands of whatever nature or description and rights thereto, including water rights, now belonging or appertaining to the United States, lying and being situated in the States of Nebraska, Nevada, South Dakota, North Dakota, Montana, Washington, Oregon, Wyoming, Idaho, Colorado, Kansas, and California, and in the Territories of New Mexico, Arizona, Oklahoma, and Utah, severally, with full and complete jurisdiction thereover, be, and are hereby, granted, ceded, and confirmed to said several States and Territories, the grant to each of said States and Territories to be of the lands contained within its present boundaries and territorial limits.

"And the President of the United States shall issue letters patent for the same to the said several States and Territories in this section designated whenever and as any of said States and Territories shall by an act of its legislature accept the disposition of the lands as herein provided, within the time hereinafter specified. This act shall in no manner affect any of the lands held by the United States for parks, naval, military, or other public purposes, nor any Indian lands, nor lands held in trust for or for use by Indians, nor mineral lands, nor shall it apply in any manner to the Territory of Alaska.

"SEC. 2. That the governors of the Territories of Utah, Arizona, Oklahoma, and New Mexico shall, within a reasonable time after the passage of this act, call special sessions, if need be, of their several legislatures, to take into consideration and pass upon the provisions of this act and the questions herein submitted to them, and may from time to time call such other sessions of their respective legislatures as may be rendered necessary; and the benefits of this act shall not accrue to any State or Territory which shall not have accepted the provisions thereof within four years from its approval.

"SEC. 3. That as soon as practicable after the issuance of letters patent to any State or Territory herein mentioned, for the lands therein situate, and from time to time thereafter as occasion may require, it shall be the duty of the Secretary of the Interior, at the expense of the United States, to cause to be delivered to the proper authorities of such State or Territory all maps, records, books, and papers, or certified copies thereof in case it may be necessary to retain the originals in the General Land Office, which may be necessary to such State or Territory for the proper control, administration, and disposition of such lands.

"SEC. 4. That no State or Territory accepting the cession of lands as herein provided shall in any case sell, lease, or dispose of said lands in greater quantity than 160 acres to any one person, corporation, or association, nor shall any such State or Territory in any manner impair or abridge the homestead privileges now granted to soldiers and sailors under the land laws of the United States."

The CHAIRMAN. The gentleman from Wyoming moves that the committee do now rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. TAWNEY, Chairman of the Committee of the Whole House on the state of the Union, reported that the committee had had under consideration the bill S. 3057 and had come to no resolution thereon.

UINTAH RESERVATION, UTAH.

Mr. SUTHERLAND. Mr. Speaker, I call up the following privileged resolution.

The Clerk read as follows:

House resolution No. 238.

Resolved, That the Secretary of the Interior be, and hereby is, instructed and directed to transmit to the House of Representatives the results of the recent surveys and examinations of the agricultural lands and water resources of the Uintah Indian Reservation in Utah.

The question was taken, and the resolution was agreed to.

GNADENHUTTEN SPECIAL SCHOOL DISTRICT.

Mr. SNOOK. Mr. Speaker, I ask unanimous consent for the present consideration of the bill which I send to the desk.

The Clerk read as follows:

A bill (H. R. 11742) granting certain lots in Gnadenhutten, Ohio, to Gnadenhutten special school district.

Be it enacted, etc., That lots 68 and 69 in the town of Gnadenhutten, Ohio, are hereby granted in fee simple to the Gnadenhutten special school district of Gnadenhutten, Tuscarawas County, Ohio.

The amendments recommended by the committee were read as follows:

In line 4 strike out the words "granted in fee simple" and insert the word "quitclaimed;" and in line 6, after the word "Ohio," insert the words "subject to the disposition and control of the board of education of said district."

The SPEAKER. Is there objection?

Mr. PAYNE. I would like to inquire of the gentleman, reserving the right to object, what there is about the disposition of this land?

Mr. SNOOK. Mr. Speaker, I call this bill up for my colleague [Mr. CASSINGHAM], who is absent, and the facts are these; In 1824 the General Government ceded to the village of Gnadenhutten, in Ohio, two lots to be used for school purposes. They immediately built a schoolhouse on these lots. They were used until 1896, when the houses became too small and the space too limited for the uses of the village, and they had to buy a larger space of ground and build another school. The question is whether or not full title was ceded to the village when the land was ceded; and now they want this bill placing the equity of the Government in the special school district, so that they can sell the land.

Mr. PAYNE. This is to confirm the title.

Mr. GROSVENOR. Was there any limitation in the original grant?

Mr. SNOOK. It was for school purposes. They want it for a public school.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The question is on the amendments offered by the committee.

The question was taken, and the amendments were agreed to.

The bill as amended was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time, and passed.

On motion of Mr. SNOOK, a motion to reconsider the vote by which the bill was passed was laid on the table.

REPRINT OF A BILL.

Mr. SCOTT. Mr. Speaker, I ask for a reprint of the bill (H. R. 8735) to apply a portion of proceeds of sale of public lands to the endowment of schools or departments of mining and metallurgy, etc., and the accompanying report.

The SPEAKER. The gentleman from Kansas asks for the reprint of a bill. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

SOLOMON P. BROCKWAY.

Mr. GIBSON. Mr. Speaker, I wish to call up a conference report.

Mr. DALZELL. Has it been printed formerly?

Mr. GIBSON. It was printed several days ago.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 10545) granting an increase of pension to Solomon P. Brockway, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the sum proposed by the Senate insert "twenty-four;" and the Senate agree to the same.

HENRY R. GIBSON,
A. B. DARRAGH,
Managers on the part of the House.
P. J. McCUMBER,
JOSEPH SIMON,
JAS. P. TALIAFERRO,
Managers on the part of the Senate.

The statement was read, as follows:

Statement of House conferees to accompany conference report on H. R. 10545.

The House fixed the rate of the pension at $30 per month. The Senate reduced this rate to $20 per month. The conference report fixes the rate at $24 per month.

HENRY R. GIBSON,
A. B. DARRAGH,
Managers on the part of the House.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken, and the conference report was agreed to.

GEORGE W. BARRY.

Mr. GIBSON. I present another conference report and ask that the statement only be read.

The SPEAKER. The gentleman from Tennessee asks unanimous consent that the reading of the report be omitted and that the statement be read. Is there objection? [After a pause.] The Chair hears none.

The statement of the House conferees was read, as follows:

The bill (H. R. 9544) granting an increase of pension to George W. Barry passed the House at $20. The Senate amended the same by striking out $20 and inserting $16.

The result of the conference is that the House recedes from its disagreement to the amendment of the Senate and agrees to the same, leaving the bill as it passed the Senate.

C. A. SULLOWAY,
HENRY R. GIBSON,
RUD. KLEBERG,
Managers on the part of the House.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken, and the conference report was agreed to.

On motion of Mr. GIBSON, a motion to reconsider the several votes by which the conference reports were agreed to was laid on the table.

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

H. R. 11657. An act allowing the construction of a dam across the St. Lawrence River;

H. R. 5094. An act for the relief of the persons who sustained damage by the explosion of an ammunition chest of Battery F, Second United States Artillery, July 16, 1894;

H. R. 3309. An act to remove charge of desertion against Ephraim H. Gallion;

H. R. 11591. An act for the relief of Stanley & Patterson, and to authorize a pay director of the United States Navy to issue a duplicate check; and

H. R. 8129. An act to amend sections 4076, 4078, and 4075 of the Revised Statutes.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 4777. An act to authorize the Nashville Terminal Company to construct a bridge across the Cumberland River in Davidson County, Tenn.; and

S. 5062. An act to authorize the county commissioners of Crow Wing County, in the State of Minnesota, to construct a bridge across the Mississippi River at a point between Pine River and Dean Brook, subject to the approval of the Secretary of War.

ENROLLED BILLS PRESENTED TO THE PRESIDENT OF THE UNITED STATES.

Mr. WACHTER also, from the Committee on Enrolled Bills, reported that they had presented this day to the President of the United States for his approval bills of the following titles:

H. R. 11052. An act granting a pension to Nelson Johnson;

H. R. 7076. An act granting an increase of pension to Leath Gilliland;

H. R. 11495. An act granting a pension to Mary A. Bailey;

H. R. 3241. An act granting an increase of pension to Hinkley G. Knights;

H. R. 3678. An act granting an increase of pension to John Washburn;

H. R. 2606. An act granting an increase of pension to Albert H. Steifenhofer;

H. R. 11686. An act granting a pension to Eleanore F. Adams;

H. R. 5186. An act granting a pension to John Conter;

H. R. 3910. An act granting a pension to Dennis J. Kelly;

H. R. 13450. An act granting an increase of pension to Henry Hunt;

H. R. 13217. An act granting an increase of pension to Thomas W. Dodge;

H. R. 11812. An act granting an increase of pension to Martin Boice;

H. R. 11252. An act granting an increase of pension to Edwin M. Gowdey;

H. R. 7704. An act granting an increase of pension to Christianna Leach;

H. R. 3733. An act granting an increase of pension to Israel Haller;

H. R. 6030. An act granting an increase of pension to William G. De Garis;

H. R. 11249. An act granting an increase of pension to Katharine Rains Paul;

H. R. 9290. An act granting a pension to Frances L. Ackley;
H. R. 8003. An act granting an increase of pension to Louisa M. Macfarlane;
H. R. 2430. An act granting a pension to Lizana D. Streeter;
H. R. 10819. An act for the relief of George T. Winston, president of North Carolina College of Agriculture and Mechanic Arts, and W. S. Primrose, chairman board trustees;
H. R. 5273. An act granting an increase of pension to James Van Zant;
H. R. 13296. An act granting an increase of pension to Francis Scott;
H. R. 13613. An act granting an increase of pension to Charles G. Howard;
H. R. 10773. An act granting a pension to Archer Bartlett;
H. R. 10752. An act granting a pension to Harriet T. Milburn;
H. R. 8924. An act granting an increase of pension to George W. Mathews;
H. R. 11831. An act granting an increase of pension to John W. Acker;
H. R. 14241. An act granting an increase of pension to Peter Dugan;
H. R. 14184. An act granting an increase of pension to Andrew J. Fogg;
H. R. 13398. An act granting an increase of pension to George G. Sabin;
H. R. 14146. An act granting an increase of pension to John Murphy;
H. R. 12797. An act to ratify act No. 65 of the twenty-first Arizona legislature;
H. R. 1741. An act granting an increase of pension to Griffith Evans;
H. R. 5984. An act granting an increase of pension to William H. Van Riper;
H. R. 9496. An act granting a pension to Forrest Andrews;
H. R. 351. An act granting an increase of pension to Robert Carpenter;
H. R. 11599. An act to redivide the district of Alaska into three recording and judicial divisions; and
H. R. 14380. An act to authorize the construction of a bridge across Waccamaw River at Conway, in the State of South Carolina, by Conway and Seashore Railroad Company.

Mr. PAYNE. I move that the House do now adjourn.

The motion was agreed to.

And accordingly (at 5 o'clock and 19 minutes p. m.) the House adjourned.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Attorney-General submitting an estimate of appropriation for purchase of a steam launch for the penitentiary at McNeil Island, Washington—to the Committee on Appropriations, and ordered to be printed.

A letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Supervising Architect submitting an estimate of appropriation for rental of temporary quarters at Springfield, Ill.—to the Committee on Appropriations, and ordered to be printed.

A letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Secretary of State submitting an estimate of appropriation for purchase of a dictionary of the Spanish language—to the Committee on Appropriations, and ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. LOUDENSLAGER, from the Committee on Pensions, to which was referred the bill of the Senate (S. 5741) granting a pension to Martha E. Kendrick, reported the same without amendment, accompanied by a report (No. 2464); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 5506) granting an increase of pension to Clayton P. Van Houten, reported the same with amendment, accompanied by a report (No. 2465); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 3292) granting an increase of pension to Henry Loor Reger, reported the same without amendment, accompanied by a report (No. 2466); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 4190) granting a pension to Fredereka Seymore, reported the same without amendment, accompanied by a report (No. 2467); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 5856) granting an increase of pension to Elizabeth A. Turner, reported the same with amendment, accompanied by a report (No. 2468); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 332) granting an increase of pension to Louisa A. Crosby, reported the same without amendment, accompanied by a report (No. 2469); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 4183) granting an increase of pension to Oceana B. Irwin, reported the same without amendment, accompanied by a report (No. 2470); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 1205) granting a pension to Isabella H. Irish, reported the same without amendment, accompanied by a report (No. 2471); which said bill and report were referred to the Private Calendar.

Mr. BROMWELL, from the Committee on Pensions, to which was referred the bill of the House (H. R. 14732) granting an increase of pension to Grace M. Read, reported the same with amendment, accompanied by a report (No. 2472); which said bill and report were referred to the Private Calendar.

Mr. WILEY, from the Committee on Pensions, to which was referred the bill of the House (H. R. 9611) for the relief of Maria M. C. Smith, reported the same with amendment, accompanied by a report (No. 2473); which said bill and report were referred to the Private Calendar.

Mr. BALL of Delaware, from the Committee on Pensions, to which was referred the bill of the House (H. R. 6332) granting a pension to Michael Conlon, reported the same with amendment, accompanied by a report (No. 2474); which said bill and report were referred to the Private Calendar.

Mr. RICHARDSON of Alabama, from the Committee on Pensions, to which was referred the bill of the House (H. R. 14182) granting an increase of pension to Susan B. Lynch, reported the same with amendments, accompanied by a report (No. 2475); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 13634) granting an increase of pension to Helen Olivia Leckie, reported the same with amendments, accompanied by a report (No. 2476); which said bill and report were referred to the Private Calender.

Mr. BALL of Delaware, from the Committee on Pensions, to which was referred the bill of the House (H. R. 931) granting a pension to Huldah A. Clark, reported the same with amendments, accompanied by a report (No. 2477); which said bill and report were referred to the Private Calendar.

ADVERSE REPORTS.

Under clause 2, Rule XIII, Mr. MINOR, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the House (H. R. 4337) providing for the safety of persons on waters under the jurisdiction of the United States, reported the same adversely, accompanied by a report (No. 2478); which said bill and report were laid on the table.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced, and severally referred as follows:

By Mr. NEEDHAM: A bill (H. R. 15068) providing for the resurvey of certain townships in San Diego County, State of California—to the Committee on the Public Lands.

By Mr. MERCER: A joint resolution (H. J. Res. 200) amending "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," approved June 6, 1902—to the Committee on Public Buildings and Grounds.

By Mr. HAY: A resolution (H. Res. 301) as to expenditures of money in the island of Cuba—to the Committee on Insular Affairs.

By Mr. DALZELL: A resolution (H. Res. 302) providing for

continuation of index of reports of House committees—to the Committee on Accounts.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. COUSINS: A bill (H. R. 15069) granting an increase of pension to Daniel P. Marshall—to the Committee on Invalid Pensions.

By Mr. CRUMPACKER: A bill (H. R. 15070) granting an increase of pension to Solomon Denny—to the Committee on Invalid Pensions.

By Mr. GOLDFOGLE: A bill (H. R. 15071) granting a pension to Louisa M. Sippell—to the Committee on Pensions.

By Mr. HASKINS: A bill (H. R. 15072) granting a pension to Eliza J. Aldrich—to the Committee on Invalid Pensions.

Also, a bill (H. R. 15073) granting a pension to Minerva Hunt—to the Committee on Invalid Pensions.

By Mr. MIERS of Indiana: A bill (H. R. 15074) granting an increase of pension to George F. White—to the Committee on Invalid Pensions.

By Mr. NAPHEN: A bill (H. R. 15075) granting an increase of pension to Ransom D. Pratt—to the Committee on Invalid Pensions.

By Mr. RUSSELL: A bill (H. R. 15076) granting a pension to Mary E. Mahan—to the Committee on Invalid Pensions.

By Mr. WACHTER: A bill (H. R. 15077) for the relief of the heirs of John Hamilton, deceased—to the Committee on War Claims.

By Mr. BATES: A bill (H. R. 15078) granting an increase of pension to Hiram Prussia—to the Committee on Invalid Pensions.

Also, a bill (H. R. 15079) granting a pension to Catherine Lenihan, now Hairsine—to the Committee on Pensions.

By Mr. COWHERD: A bill (H. R. 15080) granting a pension to Phœbe B. Colton—to the Committee on Invalid Pensions.

Also, a bill (H. R. 15081) for the relief of George W. Buxton—to the Committee on Claims.

By Mr. DAYTON: A bill (H. R. 15082) granting a pension to Samuel Goodwin—to the Committee on Invalid Pensions.

By Mr. FOSS: A bill (H. R. 15083) authorizing the President of the United States to nominate Capt. Charles Edgar Clark, United States Navy, to be a rear-admiral of the senior grade on the active list—to the Committee on Naval Affairs.

By Mr. SLAYDEN: A bill (H. R. 15084) granting an increase of pension to James H. Powell—to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ADAMS: Protest of the Pure Oil Company, of Pittsburg, Pa., against the passage of the ship-subsidy bill—to the Committee on Interstate and Foreign Commerce.

By Mr. ALEXANDER: Petition of numerous citizens of Buffalo, N. Y., and vicinity, in favor of House bills 178 and 179, for the repeal of the tax on distilled spirits—to the Committee on Ways and Means.

Also, petition of West Side Woman's Christian Temperance Union, of Buffalo, N. Y., for an amendment to the Constitution preventing polygamous marriages—to the Committee on the Judiciary.

By Mr. BOWERSOCK: Protest of the Pure Oil Company, of Pittsburg, Pa., against the passage of the ship-subsidy bill—to the Committee on Interstate and Foreign Commerce.

By Mr. BULL: Resolutions of the Board of Trade of Providence, R. I., in favor of a law to pension men of Life-Saving Service—to the Committee on Interstate and Foreign Commerce.

By Mr. CAPRON: Resolutions of the Board of Trade of Providence, R. I., in favor of a law to pension men of Life-Saving Service—to the Committee on Interstate and Foreign Commerce.

By Mr. COWHERD: Papers to accompany House bill relating to the claim of George W. Buxton—to the Committee on Claims.

Also, papers to accompany House bill granting a pension to Smith B. Nunn—to the Committee on Invalid Pensions.

By Mr. DRAPER: Petition of a committee of the Pure Oil Company, of Pittsburg, Pa., protesting against the passage of the ship-subsidy bill—to the Committee on Interstate and Foreign Commerce.

By Mr. GRAHAM: Protest of the Pure Oil Company, of Pittsburg, Pa., against the passage of the ship-subsidy bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of Local Union No. 202, Brotherhood of Carpenters and Joiners, Pittsburg, Pa., favoring the amended irrigation bill and the Senate amendment to the sundry civil bill—to the Committee on Irrigation of Arid Lands.

Also, resolutions of the State League of German Catholic Societies of Pennsylvania, in relation to the Catholic Federation, etc.—to the Committee on Education.

Also, resolutions of Mine Workers' Union No. 1234, of Tarentum, Pa., in regard to restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. GREEN of Pennsylvania: Remonstrance of the General Synod of the Reformed Church of the United States against the publication of the so-called Jefferson Bible—to the Committee on the Library.

By Mr. HOWELL: Petition of the common council of Hoboken, N. J., favoring the passage of House bill 6279, to increase the pay of letter carriers—to the Committee on the Post-Office and Post-Roads.

Also, resolutions of Turn Verein of New Brunswick, N. J., against some provisions of the immigration bill—to the Committee on Immigration and Naturalization.

By Mr. MCCALL: Memorial of Charles Francis Adams, Andrew Carnegie, C. Schurz, Edwin Burritt Smith, and Herbert Welsh, for the appointment of a committee of Congress to proceed to the Philippine Archipelago to investigate the conditions there, and for other purposes—to the Committee on Rules.

By Mr. MIERS of Indiana: Paper to accompany House bill 14425, granting an increase of pension to Henry W. C. Miller—to the Committee on Invalid Pensions.

Also, petition of Post No. 196, of Jasonville, Grand Army of the Republic, Department of Indiana, favoring a bill to modify the pension laws—to the Committee on Invalid Pensions.

By Mr. SLAYDEN: Papers to accompany House bill granting increase of pension to James H. Powell—to the Committee on Invalid Pensions.

By Mr. SMITH of Kentucky: Petition of 12 citizens of Ohio County, Ky., to accompany House bill 10768, for the payment of property lost in the war of the rebellion—to the Committee on War Claims.

By Mr. STEELE: Petition to accompany House bill 12251, for reimbursement of Ephraim Clendenning, William Mussellman, and Jacob R. Miller, bondsmen of Isaiah W. Eurit, late postmaster at Macy, Ind., together with 14 affidavits, praying for reimbursement by reason of loss incurred on account of the negligence of others and through no fault or neglect on the part of the bondsmen—to the Committee on Claims.

By Mr. WACHTER: Petition of Mahlon Hamilton, heir of John Hamilton, deceased, for reference of war claim to Court of Claims—to the Committee on War Claims.

By Mr. WILCOX: Resolution of the Chamber of Commerce of Honolulu, H. I., asking permission to J. W. Mackay, of the Commercial Cable Company, to lay electric cable between the mainland and the Territory of Hawaii—to the Committee on the Territories.

Also, resolutions of the Chamber of Commerce and Merchants' Association of Honolulu, asking the United States to grant aid to the Territory for the payment of claims caused by burning of a part of the city of Honolulu to eradicate the bubonic plague in 1900—to the Committee on Claims.

By Mr. YOUNG: Petition of the Pure Oil Company, of Pittsburg, Pa., in opposition to the ship-subsidy bill—to the Committee on Interstate and Foreign Commerce.

SENATE.

FRIDAY, *June 13, 1902.*

Prayer by Rev. F. J. PRETTYMAN, of the city of Washington.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved. It is approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, announced that the House had agreed to the reports of the committees of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the following bills:

A bill (H. R. 4103) granting a pension to William C. Hickox;

A bill (H. R. 8794) granting an increase of pension to Henry I. Smith;

A bill (H. R. 9544) granting an increase of pension to George W. Barry; and

A bill (H. R. 10545) granting an increase of pension to Solomon P. Brockway.

The message also announced that the House had passed a bill (H. R. 11742) granting certain lots in Gnadenhutten, Ohio, to Gnadenhutten special school district; in which it requested the concurrence of the Senate.